SENATE, No. 1420

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Senator STEVEN V. OROHO
District 24 (Morris, Sussex and Warren)
Senator DAWN MARIE ADDIEGO
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SYNOPSIS

Provides corporation business tax and gross income tax credits to persons leasing agricultural land to beginning farmers.

CURRENT VERSION OF TEXT

As introduced.

AN ACT providing credits against the corporation business tax and the gross income tax to persons leasing agricultural land to beginning farmers and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. For privilege periods beginning on or after January 1 next following the effective date of P.L.   , c.   (C.   ) (pending before the Legislature as this bill), a taxpayer that executes an agricultural assets transfer agreement with a qualified beginning farmer as provided in subsection b. of this section, and that meets the requirements of this section and the rules and regulations adopted pursuant thereto, shall be allowed a credit against the tax due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount as provided in subsection c. of this section.

b. Any agricultural assets transfer agreement for which a credit is claimed pursuant to subsection a. of this section shall:

(1) be in writing;

(2) provide for the lease of agricultural land located in this State, including any agricultural improvements, and may provide for the rental of agricultural equipment;

(3) include a lease made on a cash basis, or on a commodity share basis which includes a share of the crops or livestock produced on the agricultural land, or both;

(4) be for a term of at least two years, but not more than five years, which may be renewed by the qualified beginning farmer for a term of at least two years, but not more than five years;

(5) not include a lease or the rental of equipment intended as a security; and

(6) not be assigned, and the land subject to the agreement shall not be subleased.

c. (1) For an agreement that includes a lease on a cash basis, the tax credit shall be calculated as follows:

(a) If the qualified beginning farmer is a veteran, the taxpayer may claim a tax credit equal to eight percent of the gross amount paid to the taxpayer under the agreement for the first privilege period that the tax credit is allowed, and seven percent of the gross amount paid to the taxpayer for each subsequent privilege period that the tax credit is allowed. However, a taxpayer may only claim seven percent of the gross amount paid to the taxpayer under a renewed agreement or a new agreement executed by the same parties; or

(b) If the qualified beginning farmer is not a veteran, the taxpayer may claim a tax credit equal to seven percent of the gross amount paid to the taxpayer under the agreement for each privilege period that the tax credit is allowed.

(2) For an agreement that includes a lease on a commodity share basis, the tax credit shall be calculated as follows:

(a) If the qualified beginning farmer is a veteran, the taxpayer may claim a tax credit equal to 18 percent of the amount paid to the taxpayer from crops or animals sold under the agreement for the first privilege period the taxpayer is allowed the tax credit, and 17 percent of the amount paid to the taxpayer for each subsequent privilege period that the taxpayer is allowed the tax credit. The taxpayer may only claim 17 percent of the amount paid to the taxpayer from crops or animals sold for any privilege period under a renewed agreement or a new agreement executed by the same parties; or

(b) If the qualified beginning farmer is not a veteran, the taxpayer may claim a tax credit equal to 17 percent of the amount paid to the taxpayer from the crops or animals sold under the agreement for each privilege period that the tax credit is allowed.

d. (1) To qualify for the tax credit allowed pursuant to this section, a taxpayer shall apply for a certification from the secretary that certifies: (a) that the agricultural assets transfer agreement meets the requirements of this section; and (b) the amount of the tax credit calculated pursuant to subsection c. of this section. The application shall include a copy of the agricultural assets transfer agreement, and any other information as determined relevant by the department. Upon certification, the secretary shall submit a copy thereof to the taxpayer and the director. The department may approve an application and issue a certification to a taxpayer that has previously been allowed a tax credit under this section. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the certification issued by the secretary.

(2) The department shall not approve an application or issue a certification to a taxpayer for a tax credit in excess of $50,000. The department also shall not approve an application or issue a certification to a taxpayer if any of the following applies:

(a) the taxpayer is at fault for terminating a prior agricultural assets transfer agreement as determined by the department;

(b) the taxpayer is a party to a pending administrative or judicial action related to an alleged violation of the rules and regulations adopted pursuant to section 1 of P.L.1995, c.311 (C.4:22-16.1) concerning the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock;

(c) the taxpayer has committed two or more violations of the rules and regulations adopted pursuant to section 1 of P.L.1995, c.311 (C.4:22-16.1) concerning the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock; or

(d) the agricultural assets are being leased or rented at a rate which is substantially higher or lower than the market rate for similar agricultural assets leased or rented within the same community, as determined by the department.

e. A taxpayer or the qualified beginning farmer may terminate an agricultural assets transfer agreement as provided in the agreement or by law. The taxpayer must notify the department of the termination within 30 days after the termination.

(1) If the department determines that the taxpayer is not at fault for the termination, the department shall not issue a certification to the taxpayer for a subsequent privilege period based on the approved application. Any prior tax credit is allowed as provided in this section. The taxpayer may apply for and be issued another certification for the same agricultural assets as provided in this section for any remaining privilege periods for which a certificate was not issued.

(2) If the department determines that the taxpayer is at fault for the termination, any prior tax credit allowed under this section is disallowed. The amount of the tax credit shall be immediately due and payable as a tax liability to the Division of Taxation. If a taxpayer does not notify the department of the termination within 30 days after the termination, the taxpayer shall be conclusively deemed at fault for the termination.

f. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period shall be as prescribed by the director. The amount of the credit applied pursuant to this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), shall not reduce a taxpayer's tax liability for a privilege period to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). Any credit shall be valid in the privilege period in which the certification is approved and any unused portion thereof may be carried forward into the next 10 privilege periods or until depleted, whichever is earlier.

g. The amount of tax credits that may be issued pursuant to this section and section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not in the aggregate exceed $8 million in any year. The department shall issue certifications for the tax credit pursuant to this section and section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) on a first-come, first-serve basis.

h. The secretary, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to carry out the provisions of this section.

i. On or before January 31 of each year, the secretary shall submit a report to the Governor, the State Treasurer, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, on the effectiveness of the tax credit in making agricultural lands and assets available to beginning farmers in the State, and keeping agricultural lands in production.

j. As used in this section:

"Agricultural asset" means agricultural land, depreciable agricultural property, crops, or livestock.

"Agricultural assets transfer agreement" or "agreement" means any agreement that meets the requirements of subsection b. of this section.

"Agricultural improvement" means any improvement, building, structure, or fixture suitable for use in farming which is located on agricultural land.

"Agricultural land" means land suitable for use in farming.

"Beginning farmer" means a person with a low or moderate net worth that engages in farming, or wishes to engage in farming.

"Department" means the Department of Agriculture.

"Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the department pursuant to rules and regulations.

"Low or moderate net worth" means a net worth that does not exceed the maximum allowable net worth established by the department pursuant to rules and regulations. The department shall determine the maximum allowable net worth by using data compiled by the National Agricultural Statistics Service in the United States Department of Agriculture.

"Production item" means tools, machinery, or equipment principally used to produce crops or livestock.

"Qualified beginning farmer" means a beginning farmer that:

(1) is a resident of the State;

(2) has sufficient education, training, or experience in farming;

(3) has access to adequate working capital and production items;

(4) will materially and substantially participate in farming; and

(5) is not responsible for managing or maintaining agricultural land and other agricultural assets that are greater than necessary to adequately support a beginning farmer as determined by the department pursuant to rules and regulations.

"Secretary" means the Secretary of Agriculture.

"Veteran" means any citizen and resident of this State honorably discharged or released under honorable circumstances from active service in any branch of the Armed Forces of the United States.

2. a. For taxable years beginning on or after January 1 next following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), a taxpayer that executes an agricultural assets transfer agreement with a qualified beginning farmer as provided in subsection b. of this section, and that meets

the requirements of this section and the rules and regulations adopted pursuant thereto, shall be allowed a credit against the New Jersey gross income tax due pursuant to N.J.S.54A:1-1 et seq., in an amount as provided in subsection c. of this section.

b. Any agricultural assets transfer agreement for which a credit is claimed pursuant to subsection a. of this section shall:

(1) be in writing;

(2) provide for the lease of agricultural land located in this State, including any agricultural improvements, and may provide for the rental of agricultural equipment;

(3) include a lease made on a cash basis, or on a commodity share basis which includes a share of the crops or livestock produced on the agricultural land, or both;

(4) be for a term of at least two years, but not more than five years, which may be renewed by the qualified beginning farmer for a term of at least two years, but not more than five years;

(5) not include a lease or the rental of equipment intended as a security; and

(6) not be assigned, and the land subject to the agreement shall not be subleased.

c. (1) For an agreement that includes a lease on a cash basis, the tax credit shall be calculated as follows:

(a) If the qualified beginning farmer is a veteran, the taxpayer may claim a tax credit equal to eight percent of the gross amount paid to the taxpayer under the agreement for the first taxable year that the tax credit is allowed, and seven percent of the gross amount paid to the taxpayer for each subsequent taxable year that the tax credit is allowed. However, a taxpayer may only claim seven percent of the gross amount paid to the taxpayer under a renewed agreement or a new agreement executed by the same parties; or

(b) If the qualified beginning farmer is not a veteran, the taxpayer may claim a tax credit equal to seven percent of the gross amount paid to the taxpayer under the agreement for each taxable year that the tax credit is allowed.

(2) For an agreement that includes a lease on a commodity share basis, the tax credit shall be calculated as follows:

(a) If the qualified beginning farmer is a veteran, the taxpayer may claim a tax credit equal to 18 percent of the amount paid to the taxpayer from crops or animals sold under the agreement for the first taxable year the taxpayer is allowed the tax credit, and 17 percent of the amount paid to the taxpayer for each subsequent taxable year that the taxpayer is allowed the tax credit. The taxpayer may only claim 17 percent of the amount paid to the taxpayer from crops or animals sold for any taxable year under a renewed agreement or a new agreement executed by the same parties; or

(b) If the qualified beginning farmer is not a veteran, the taxpayer may claim a tax credit equal to 17 percent of the amount paid to the taxpayer from the crops or animals sold under the agreement for each taxable year that the tax credit is allowed.

d. (1) To qualify for the tax credit allowed pursuant to this section, a taxpayer shall apply for a certification from the secretary that certifies: (a) that the agricultural assets transfer agreement meets the requirements of this section; and (b) the amount of the tax credit calculated pursuant to subsection c. of this section. The application shall include a copy of the agricultural assets transfer agreement, and any other information as determined relevant by the department. Upon certification, the secretary shall submit a copy thereof to the taxpayer and the director. The department may approve an application and issue a certification to a taxpayer that has previously been allowed a tax credit under this section. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the certification issued by the secretary.

(2) The department shall not approve an application or issue a certification to a taxpayer for a tax credit in excess of $50,000. The department also shall not approve an application or issue a certification to a taxpayer if any of the following applies:

(a) the taxpayer is at fault for terminating a prior agricultural assets transfer agreement as determined by the department;

(b) the taxpayer is a party to a pending administrative or judicial action related to an alleged violation of the rules and regulations adopted pursuant to section 1 of P.L.1995, c.311 (C.4:22-16.1) concerning the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock;

(c) the taxpayer has committed two or more violations of the rules and regulations adopted pursuant to section 1 of P.L.1995, c.311 (C.4:22-16.1) concerning the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock; or

(d) the agricultural assets are being leased or rented at a rate which is substantially higher or lower than the market rate for similar agricultural assets leased or rented within the same community, as determined by the department.

e. A taxpayer or the qualified beginning farmer may terminate an agricultural assets transfer agreement as provided in the agreement or by law. The taxpayer must notify the department of the termination within 30 days after the termination.

(1) If the department determines that the taxpayer is not at fault for the termination, the department shall not issue a certification to the taxpayer for a subsequent taxable year based on the approved application. Any prior tax credit is allowed as provided in this section. The taxpayer may apply for and be issued another certification for the same agricultural assets as provided in this section for any remaining taxable years for which a certificate was not issued.

(2) If the department determines that the taxpayer is at fault for the termination, any prior tax credit allowed under this section is disallowed. The amount of the tax credit shall be immediately due and payable as a tax liability to the Division of Taxation. If a taxpayer does not notify the department of the termination within 30 days after the termination, the taxpayer shall be conclusively deemed at fault for the termination.

f. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed against the tax imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year shall be as prescribed by the director. The amount of the credit applied pursuant to this section against the tax imposed pursuant to N.J.S.54A:1-1 et seq. shall not reduce a taxpayer's tax liability for a taxable year to an amount less than zero. Any credit shall be valid in the taxable year in which the certification is approved and any unused portion thereof may be carried forward into the next 10 taxable years or until depleted, whichever is earlier.

g. A business entity that is classified as a partnership for federal income tax purposes shall not be allowed the credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of the taxpayer in respect of a distributive share of partnership income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year.

A taxpayer that is a New Jersey S corporation shall not be allowed the credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of a taxpayer in respect of a pro rata share of S corporation income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the New Jersey S corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S corporation income of the New Jersey S corporation for its taxable year ending within or with the taxpayer's taxable year.

h. The amount of tax credits that may be issued pursuant to this section and section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not in the aggregate exceed $8 million in any year. The department shall issue certifications for the tax credit pursuant to this section and section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) on a first-come, first-serve basis.

i. The secretary, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to carry out the provisions of this section.

j. On or before January 31 of each year, the secretary shall submit a report to the Governor, the State Treasurer, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, on the effectiveness of the tax credit in making agricultural lands and assets available to beginning farmers in the State, and keeping agricultural lands in production.

k. As used in this section:

"Agricultural asset" means agricultural land, depreciable agricultural property, crops, or livestock.

"Agricultural assets transfer agreement" or "agreement" means any agreement that meets the requirements of subsection b. of this section.

"Agricultural improvement" means any improvement, building, structure, or fixture suitable for use in farming which is located on agricultural land.

"Agricultural land" means land suitable for use in farming.

"Beginning farmer" means a person with a low or moderate net worth that engages in farming, or wishes to engage in farming.

"Department" means the Department of Agriculture.

"Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the department pursuant to rules and regulations.

"Low or moderate net worth" means a net worth that does not exceed the maximum allowable net worth established by the department pursuant to rules and regulations. The department shall determine the maximum allowable net worth by using data compiled by the National Agricultural Statistics Service in the United States Department of Agriculture.

"Production item" means tools, machinery, or equipment principally used to produce crops or livestock.

"Qualified beginning farmer" means a beginning farmer that:

(1) is a resident of the State;

(2) has sufficient education, training, or experience in farming;

(3) has access to adequate working capital and production items;

(4) will materially and substantially participate in farming; and

(5) is not responsible for managing or maintaining agricultural land and other agricultural assets that are greater than necessary to adequately support a beginning farmer as determined by the department pursuant to rules and regulations.

"Secretary" means the Secretary of Agriculture.

"Veteran" means any citizen and resident of this State honorably discharged or released under honorable circumstances from active service in any branch of the Armed Forces of the United States.

3. This act shall take effect immediately.

STATEMENT

This bill would provide corporation business tax and gross income tax credits to persons leasing agricultural land to beginning farmers.

Specifically, for privilege periods and taxable years beginning on or after January 1 following the effective date of this bill, a taxpayer that executes an agricultural assets transfer agreement with a qualified beginning farmer, and that meets the requirements of the bill and the regulations adopted by the Department of Agriculture ("department"), would be entitled to a tax credit as described below.

Any agricultural assets transfer agreement for which a tax credit is claimed under the bill must: (1) be in writing; (2) provide for the lease of agricultural land located in this State, including any agricultural improvements, and may provide for the rental of agricultural equipment; (3) include a lease made on a cash basis, or on a commodity share basis which includes a share of the crops or livestock produced on the agricultural land, or both; (4) be for a term of at least two years, but not more than five years, which may be renewed by the qualified beginning farmer for a term of at least two years, but not more than five years; (5) not include a lease or the rental of equipment intended as a security; and (6) not be assigned, and the land subject to the agreement could not be subleased.

Under the bill, a "qualified beginning farmer" means a person with a low or moderate net worth, as determined by the department, that engages, or wishes to engage, in farming, and that: (1) is a resident of the State; (2) has sufficient education, training, or experience in farming; (3) has access to adequate working capital and production items; (4) will materially and substantially participate in farming; and (5) is not responsible for managing or maintaining agricultural land and other agricultural assets that are greater than necessary to adequately support a beginning farmer as determined by the department pursuant to regulation.

The amount of the tax credit issued would depend on whether the lease is made on a cash basis or a commodity share basis, and whether or not the qualified beginning farmer is a veteran. For an agreement that includes a lease on a cash basis, if the qualified beginning farmer is a veteran, the taxpayer may claim a tax credit equal to eight percent of the gross amount paid to the taxpayer under the agreement for the first privilege period or taxable year, and seven percent for each subsequent privilege period or taxable year. If the qualified beginning farmer is not a veteran, the taxpayer may claim a tax credit equal to seven percent of the gross amount paid to the taxpayer for each privilege period or taxable year. For an agreement that includes a lease on a commodity share basis, if the qualified beginning farmer is a veteran, the taxpayer may claim a tax credit equal to 18 percent of the amount paid to the taxpayer from crops or animals sold under the agreement for the first privilege period or taxable year, and 17 percent for each subsequent privilege period or taxable year. If the qualified beginning farmer is not a veteran, the taxpayer may claim a credit equal to 17 percent of the amount paid to the taxpayer from the crops or animals sold under the agreement for each privilege period or taxable year.

To qualify for a credit under the bill, a taxpayer would have to apply for a certification from the Secretary of Agriculture that certifies that the agricultural assets transfer agreement meets the requirements of the bill, and the amount of the tax credit. The department would not approve an application or issue a certification to a taxpayer for a tax credit of more than $50,000. In addition, the department would not approve an application or issue a certification if: (1) the taxpayer is at fault for terminating a prior agricultural assets transfer agreement; (2) the taxpayer is a party to a pending administrative or judicial action related to an alleged violation of the regulations adopted pursuant to P.L.1995, c.311 (C.4:22-16.1) concerning the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock; (3) the taxpayer has committed two or more violations of the regulations adopted pursuant to P.L.1995, c.311 (C.4:22-16.1); or (4) the agricultural assets are being leased or rented at a rate which is substantially higher or lower than the market rate for similar agricultural assets leased or rented within the same community.

The tax credit could not reduce a taxpayer's tax liability for any privilege period or taxable year to an amount less than zero. Any credit would be valid in the privilege period or taxable year in which the certification is approved and any unused portion could be carried forward into the next 10 privilege periods or taxable years, or until depleted, whichever is earlier. Also, the combined amount of tax credits that may be issued under the bill could not in the aggregate exceed $8 million in any year. The department would issue certifications for the tax credit on a first-come, first-serve basis.

Under the bill, a taxpayer or the qualified beginning farmer may terminate an agricultural assets transfer agreement as provided in the agreement or by law. The taxpayer must notify the department of the termination within 30 days. If the department determines that the taxpayer is not at fault for the termination, the department would not issue a tax credit certification to the taxpayer for a subsequent privilege period or taxable year based on the approved application. Any prior tax credit would be allowed. The taxpayer may apply for and be issued another certification for the same agricultural assets for any remaining privilege periods or taxable years for which a certificate was not issued. If the department determines that the taxpayer is at fault for the termination, any prior tax credit allowed would be disallowed. The amount of the tax credit would be immediately due and payable as a tax liability to the Division of Taxation. If a taxpayer does not notify the department of a termination with 30 days after the termination, the taxpayer would be conclusively deemed at fault for the termination.

The purpose of this bill is to provide an incentive to taxpayers to make agricultural lands and assets available to beginning farmers in the State, and keep agricultural lands in production.