



Publication 51

Questions and Answers on New York State's Farmers' School Tax Credit

Update to Publication 51
Questions and Answers on New York State's
Farmers' School Tax Credit

Note: This update supersedes Publication 51.1 dated April 2006. The current version of Publication 51 is dated 11/97.

Legislation passed by the legislature and signed into law by Governor Pataki during 1998, 1999, 2003, 2005, and 2006 provides new enhancements to the *Farmers' School Tax Credit*. In addition, information is added concerning several issues addressed in the original publication. The law changes and the additional information about the credit are explained below. Except as explained in this update, all other issues addressed in Publication 51 remain valid.

Legislative Changes

Part II - Eligible Farmer

For tax years **beginning on or after January 1, 2003**, the statutory definition of *eligible farmer* has been expanded. Taxpayers will meet the definition of *eligible farmer* if their:

- federal gross income from farming for the tax year is at least two-thirds of their excess federal gross income; or
- average of federal gross income from farming for the tax year and the two consecutive tax years immediately preceding that tax year is at least two-thirds of their excess federal gross income for the tax year.

Prior to the amendment, taxpayers met the definition of *eligible farmer* only if their federal gross income from farming for the tax year was at least two-thirds of their excess federal gross income.

The following revisions have been made to question 2 on page 5 and questions 3 and 4 on page 6.

For purposes of question 2, *What is considered farming for purposes of this credit?*, for tax years **beginning in 2006 and after**, a person is also engaged in the business of farming if the person is a shareholder of a New York C corporation that has made a special gross income from farming election on Form CT-47.1, *Election or Termination of Election to Deem Income for Purposes of the Farmers' School Tax Credit*.

In addition, *farming* will include commercial horse boarding operations as defined in section 301(13) of the Agriculture and Markets Law and the growing of Christmas trees, for purposes of transplanting or cutting from the stump, under a managed Christmas tree operation.

For purposes of question 3, *What is considered gross income from farming for an individual?*, and for question 4, *What is gross income from farming for a corporation?*, for tax years **beginning in 2006 and after**, gross income from farming will also include gross income from commercial horse boarding operations as defined in section 301(13) of the Agriculture and Markets Law, to the extent not included in farm income reported on the individual's or corporation's federal income tax return and gross income from the growing of Christmas trees, for purposes of transplanting or cutting from the stump, under a managed Christmas tree operation.

Also for purposes of question 3, for tax years **beginning in 2006 and after**, gross income from farming includes:

- your pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1;
- your pro rata share of your partnership's gross income from farming that represents the partnership's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1; and
- your pro rata share of your New York S corporation gross income from farming that represents the S corporation's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1.

Part III - Qualified Agricultural Property

For tax years **beginning in 2001 and thereafter**, the statutory definition of *qualified agricultural property* has been expanded to include land set aside or retired under a federal supply management or soil conservation program. (Note: This amendment merely confirms existing Tax Department policy that such property qualifies for the credit: See Part III, question 10, on page 11.)

Also, for tax years **beginning in 2006 and after**, the definition of *qualified agricultural property* includes land that at the time it becomes subject to a conservation easement would have been *qualified agricultural property*. (Note: Prior to this amendment, land that was subject to a conservation easement would have been *qualified agricultural property* **only** if such land was used in agricultural production.)

Part IV: Eligible Taxes

The answer to question 1 on page 13 states that only real property taxes levied by a school district on qualified agricultural property **owned** by the taxpayer qualify for the credit. For tax years **beginning in 1999 and thereafter**, in the case of the sale of qualified agricultural property under a land sales contract,* the buyer will be treated as the owner of the property if the following conditions are met:

- the buyer must be obligated under the land sales contract to pay the school district property taxes on the purchased property; and
- the buyer must be entitled to deduct those taxes as a tax expense for federal income tax purposes.

A buyer who meets these conditions will be considered the owner even though legal title to the property (i.e., the deed) has not been transferred to the buyer. Accordingly, the buyer, if an eligible farmer, will be entitled to claim the credit (subject to the credit limitation based on income).

Note: If the buyer is treated as the owner under these provisions, the seller may not claim the credit for the same property.

For tax years **beginning in 2005 and after**, eligible school district property taxes levied by a school district on qualified property owned by the taxpayer's father, mother, grandfather, grandmother, brother, or sister qualify for the credit if (1) the taxpayer has a written agreement with the owner(s) that the taxpayer intends to eventually purchase that qualified agricultural property, even if the taxpayer did not actually pay the school district property taxes on the qualified agricultural property, and (2) the owner(s) has given the taxpayer a document stating that the owner(s) is waiving his/her right to claim the credit, if any, on the qualified agricultural property that is subject to the written agreement.

The written agreement does not have to be in any particular legal form but it must be signed by all parties to the agreement and must have been in effect for at least part of the tax year to which the credit relates. The waiver document does not have to be in any particular form, but it can be for only one tax year and must include (1) the name of the owner(s), (2) the name of the relative with whom the owner(s) has entered into a written agreement to sell his/her qualified agricultural property, (3) a statement that the owner(s) is waiving his or her right to claim the farmers' school tax credit, (4) the tax year to which the waiver applies, (5) the date the agreement to sell was entered into, and (6) the signature of the owner(s). The waiver document must be given to the taxpayer even if the owner(s) does not qualify to claim the farmers' school tax credit on the property. Once the waiver is made for a tax year, it cannot be revoked for that tax year, but the owner(s) may decide whether or not to issue a waiver for any subsequent tax year.

* A land sales contract, commonly referred to as an *installment land contract*, is an agreement to transfer land ownership in exchange for a series of principal and interest payments. The seller does not transfer formal title to the property to the buyer until all or a certain number of payments are made. A land sales contract may also be referred to as *contract for deed*, *bond for deed*, *conditional sale of real estate*, *contract for sale of land*, and *land contract*. A *lease with an option to purchase* type arrangement is not a land sales contract.

Part V: Base Acreage and Related Party Rules

Under question 2, on page 15, the base acreage amount of 250 acres will now apply to tax years **beginning after 1997 and before 2006**. Previously, this increase was scheduled to take effect for tax years beginning in 1999 and thereafter. For tax years **beginning in 2006 and after**, the base acreage amount is increased to 350 acres.

Also, for tax years **beginning in 2001 and thereafter**, the base acreage amount is increased by acreage enrolled or participating in a federal environmental conservation acreage reserve program pursuant to Title Three of the Federal Agricultural Improvement and Reform Act of 1996. This provision will allow farmers who participate in this program and whose acres of qualified agricultural property exceed the base acreage amount to receive a larger Farmers' School Tax Credit.

Example: For tax year 2001, a farmer owns 300 acres of qualified agricultural property. Thirty acres of that property are enrolled or participating in a federal environmental conservation acreage reserve program pursuant to Title Three of the Federal Agricultural Improvement and Reform Act of 1996. Assuming the farmer otherwise qualifies for the Farmers' School Tax Credit, the farmer's base acreage amount for 2001 will be 280 acres (250 + 30). Accordingly, for 2001, the farmer will receive a credit of 100% of the school taxes paid on 280 acres of property and a credit for 50% of the taxes paid on 20 acres of property. Under prior law, the farmer would have only received a 100% credit for the taxes paid on 250 acres of property and a 50% credit for the taxes paid on the remaining 50 acres of property.

Part VI: Credit Limitation Based on Income

For tax years **beginning in 2006 and after**, the income limitation for purposes of determining credit eligibility is increased. The phaseout of the credit now occurs if the farmer's modified New York adjusted gross income or modified entire net income is between \$200,000 and \$300,000, with no credit allowable if the taxpayer's modified adjusted gross income or entire net income is over \$300,000. Previously, this phaseout occurred when the farmer's modified New York adjusted gross income or modified entire net income was between \$100,000 and \$150,000, with no credit allowable if the taxpayer's modified adjusted gross income or modified entire net income was over \$150,000.

Appendix A: Federal Gross Income for Individuals

Appendix A is revised to provide that for tax years **beginning in 2006 and after**, federal gross income from all sources includes:

- your pro rata share of gross income from a New York C corporation that has made a special gross income from farming election on Form CT-47.1, *Election or Termination of Election to Deem Income for Purposes of the Farmers' School Tax Credit*, and
- your pro rata share of your partnership's gross income and your pro rata share of your New York S corporation gross income that represents the partnership's and S corporation's pro rata share of gross income from a New York C corporation that has made a special gross income from farming election on Form CT-47.1.

Note: This information should be obtained from the New York C corporation, the partnership, and the New York S corporation.

Appendix B: Federal Gross Income *From Farming* for Individuals

Appendix B is revised to provide that for tax years **beginning in 2006 and after**, gross income from farming also includes:

- gross income from commercial horse boarding operations as defined in section 301(13) of the Agriculture and Markets Law, to the extent not included in farm income reported on the individual's federal income tax return and gross income from the growing of Christmas trees, for purposes of transplanting or cutting from the stump, under a managed Christmas tree operation,

- your pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1, *Election or Termination of Election to Deem Income for Purposes of the Farmers' School Tax Credit*, and

- your pro rata share of your partnership's gross income from farming and your pro rata share of your New York S corporation gross income from farming that represents the partnership's and S corporation's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1.

Note: This information should be obtained from the New York C corporation, the partnership, and the New York S corporation.

Appendix D: Federal Gross Income *From Farming* for Corporations

Appendix D is revised to provide that for tax years **beginning in 2006 and after**, gross income from farming also includes gross income from commercial horse boarding operations as defined in section 301(13) of the Agriculture and Markets Law, to the extent not included in farm income reported on the corporation's federal income tax return and gross income from the growing of Christmas trees, for purposes of transplanting or cutting from the stump, under a managed Christmas tree operation.

Additional Information

Part III: Qualified Agricultural Property

The answer to question 1 on page 10 states that a structure or building is not qualified agricultural property if it is used for the **processing** of agricultural commodities. However, in the case of the production of maple syrup and cider, and the sale of wine from a farm winery, buildings and structures used to process the sap into syrup, the apples into cider, or the grapes into wine **are** considered qualified agricultural property even though the property is used in processing.

Part VI: Credit Limitation Based on Income

Under question 5 on page 17, for purposes of computing modified New York adjusted gross income, *farm indebtedness* does not include debt, or that portion of the debt, that is secured by the farmer's principal residence, even if the proceeds of the loan are used for farm expenditures.

Part VII: Credit Recapture

The answer to question 1 on page 19 contains examples showing how the recapture rules apply when qualified agricultural property is converted to nonqualified use. The following additional example illustrates the recapture rules that apply when a farmer acquires additional qualified agricultural property in a year after the year in which the farmer first claimed the credit.

Example: A farmer first claims the credit for tax year 1997. The credit is claimed on 100 acres of qualified agricultural property. In 1998, the farmer purchases an additional 100 acres of qualified agricultural property and claims the credit for 1998 on the total 200 acres of qualified agricultural property. On June 1, 2000, the entire property is converted to nonqualified use. In this instance, no credit is allowed for the year 2000. However, since the conversion took place after the end of the second year following the year in which the farmer **first** claimed the credit (1997), the farmer is not required to add back the credit claimed in 1997, 1998, or 1999. This is so even though 100 acres of the converted property were not purchased until 1998, and the credit on that portion of the converted property was first claimed in 1998.

Part VIII: Disallowance of Deduction for School Taxes

The answer to question 1 on page 21 states that you must include the amount of your credit in your New York adjusted gross income or entire net income in the tax year following the year for which the credit is allowed. However, you **do not** have to make this adjustment if you were required to report the amount of the credit as income on your federal income tax return in the tax year following the year for which the credit is allowed.

Appendix A: Federal Gross Income for Individuals

Item 8 states that capital gains from federal Schedule D are to be included in federal gross income from all sources. However, if you had capital gain distributions from a mutual fund but were not required to file federal Schedule D for the year, include in federal gross income any capital gain distributions you entered on line 13 of federal Form 1040.

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Introduction

For tax years beginning after 1996, an eligible farmer may be entitled to an income tax or corporation franchise tax credit for the school district property taxes the farmer pays. The credit is allowed only for school taxes paid on land, structures, and buildings owned by the farmer that are located in New York State and used or occupied for agricultural production. An eligible farmer may be a corporation subject to tax under Article 9-A of the Tax Law (the corporate franchise tax), or an individual or married couple subject to tax under Article 22 of the Tax Law (the personal income tax). In addition, an eligible farmer may be entitled to the credit if the farmer is a partner in a partnership or a shareholder of a New York S corporation that owns property used in agricultural production. Furthermore, an estate or trust or the beneficiaries of an estate or trust may also be eligible for the credit.

The farmers' school tax credit was enacted as part of the Farmer's Protection and Farm Preservation Act of 1996. The credit provides school property tax relief to farmers to help protect and enhance the agricultural industry in New York State and to preserve our valuable open spaces, an important resource for

the tourism industry. The credit is allowed against the farmer's income tax or corporation franchise tax, and is fully funded by the state. It is not a real property tax exemption nor is it part of the agricultural assessment program. In addition, since the credit is fully funded by the state, it will not affect the revenue received by local school districts, nor will it shift the school tax burden to the farmer's neighbors.

The credit provisions were further amended in the 1997-1998 New York State budget. The new amendments, which apply to tax years 1998 and thereafter, will enable more farmers to qualify for the credit.

We have prepared the following questions and answers to provide general information to farmers and tax practitioners concerning the new credit. For purposes of clarity, the questions are generally written in the context of individual farmers. However, the rules apply equally to corporate farmers unless otherwise stated, or unless the context of the question indicates otherwise. Due to the diversity of the agricultural industry, it was not possible to address every situation. Taxpayers who have questions not addressed in this publication should contact the Tax Department. Telephone numbers and addresses are listed on the back cover of this publication.

Part I: General Information

1. What is the farmers' school tax credit?

The farmers' school tax credit is a tax credit allowed against the personal income tax (Article 22 of the Tax Law) or the corporation franchise tax (Article 9-A of the Tax Law), to reimburse some or all of the school district property taxes paid by farmers.

2. How do I claim the credit?

You claim the credit on your personal income tax return or corporation franchise tax return when you file it each year. Individuals and estates and trusts will compute the credit on Form IT-217, *Claim for Farmers' School Tax Credit*. Corporations will compute the credit on Form CT-47, *Claim for Farmers' School Tax Credit*. These forms will be available in early December of each year. To obtain these forms, see *Need Help* on the back cover of this publication.

3. For what tax years does the credit apply?

The credit applies to income or corporation tax years beginning in 1997 and thereafter.

4. Who qualifies for the credit?

An individual or corporation meeting all the following conditions will qualify for the credit:

- The individual or corporation is an eligible farmer (see Part II)
- The individual or corporation owns qualified agricultural property during the year (see Part III)
- The individual or corporation pays eligible school taxes during the year (see Part IV), and

-- The individual's or corporation's income is below the income limitation amount (see Part VI).

5. Does my farm have to be located in an agricultural district or must I apply for a special agricultural assessment in order to qualify for this credit?

No. The credit is not part of the agricultural district or agricultural assessment programs. Accordingly, the availability of this credit does not depend on the land's status for agricultural district or agricultural assessment purposes.

6. Do I have to own a minimum amount of land or have agricultural sales exceeding a certain dollar amount in order to qualify for the credit?

No. There are no minimum land or sales requirements to qualify for this credit. However, you must be an eligible farmer as described in Part II, which means that a significant part of your income must be from farming.

7. Do I have to submit any advance application or certification in order to qualify for this credit?

No. If you qualify for the credit, you simply claim the credit when you file your personal income tax return or corporate franchise tax return for the tax year.

8. Will the amount of credit allowed depend upon the type of soil on my property, as in the case of the special agricultural assessments?

No. The amount of credit does not depend on soil types.

9. Does my local school board have to take any action in order for me to claim the credit?

No. The credit is a state funded credit allowed under the personal income tax or corporate franchise tax. No action by your local school board is necessary. In addition, because the credit is state funded, the allowance of the credit will not affect the revenue the school district receives, nor will it result in a shift of the school tax burden to your neighbors.

10. How is the credit computed?

The credit equals 100% of the school taxes paid on qualified agricultural property where the acreage does not exceed the base acreage amount (see Part V) and 50% of the school taxes paid on acres in excess of the base acreage amount.

11. What if the amount of the credit exceeds my personal income tax or corporate franchise tax liability for the year?

If the credit exceeds your personal income tax for the year, reduced by any other credits, the excess amount will be refunded to you, without interest. If the credit exceeds your corporation franchise tax for the year, reduced by any other credits, the excess may be refunded to the corporation, without interest, or the corporation may elect to carry the excess over to future tax years.

12. Our farm is a corporation that is not a New York S corporation. Can the credit be applied against the corporation's fixed dollar minimum tax or alternative minimum tax?

No. The credit cannot be applied against those two taxes, but it can be applied against the entire net income tax and the capital based tax.

Note: Although by statute the credit is not allowed against the fixed dollar minimum tax and the alternative minimum tax, before any refund is issued, the Department will

apply the credit against those taxes and issue a refund for the net amount. However, if the corporation elects to carryover the credit to succeeding years, the corporation would have to pay the fixed dollar minimum or the alternative minimum tax and would receive a carryover for the credit.

13. Our farm is a New York S corporation. Does the corporation claim the credit on its franchise tax return or do the shareholders claim their share of the credit on their individual income tax returns?

The corporation may not claim the credit. In the case of a New York S corporation that owns qualified agricultural property, the shareholders of the corporation may claim the credit on their personal income tax returns, based upon their shares of the corporation's acres of qualified agricultural property and eligible taxes. However, the individual shareholders must be eligible farmers to claim the credit.

14. Can partners of a partnership (including members of a limited liability company that is treated as a partnership for federal tax purposes) that owns qualified agricultural property claim their share of the credit?

Yes. The partners or members will claim the credit on their personal income tax returns, based upon their share of acres of qualified agricultural property and eligible taxes from the partnership. However, the partner (or member) may claim the credit only if the partner or member is an eligible farmer.

15. Can an estate or trust, or the beneficiary of an estate or trust, claim their share of the credit?

Yes. An estate or trust may claim the credit, based upon its share of the acres of qualified agricultural property and eligible taxes, if

the estate or trust is an eligible farmer. A beneficiary of an estate or trust can claim the credit based on his or her share of the acres and taxes, if the beneficiary is an eligible farmer. In general, the rules relating to individual farmers as discussed in this publication also apply to estates or trusts. However, certain special rules apply to estates or trusts. These rules are discussed in Part IX.

16. **Can a nonresident individual claim the credit if the individual owns qualified agricultural property located in New York State?**

Yes. The allowance of the credit does not depend upon the resident status of the taxpayer.

Part II: Eligible Farmer

1. Who is an eligible farmer?

For tax years beginning in 1997 only, an eligible farmer is an individual or corporation that receives for the taxable year at least 2/3 of his or her **federal gross income** (see Question 9) from farming. An individual who qualifies for the farmer estimated tax treatment under the federal and state income taxes qualifies as an eligible farmer for 1997.

For tax years beginning in 1998 and thereafter, an eligible farmer is an individual or corporation that receives for the taxable year at least 2/3 of his or her *excess* **federal gross income** from farming (see Question 11).

2. What is considered farming for purposes of this credit?

An individual or corporation (collectively, a person) is engaged in the business of farming if the person cultivates, operates or manages a farm for gain or profit, even though the operation may not produce a profit every year. A person is also engaged in the business of farming if the person is a member of a partnership (including a limited liability company that is treated as a partnership), a shareholder of an S corporation or the beneficiary of an estate or trust that is engaged in the business of farming.

Farming includes the operation or management of livestock, dairy, poultry, fish, fruit, fur-bearing-animal and vegetable (commonly referred to as truck) farms. Farming also includes the operation and management of plantations, ranches, ranges and orchards. Furthermore, farming includes, but is not limited to, the raising or production of the following commodities:

- field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans;
- fruits, including apples, peaches, grapes, cherries and berries;
- vegetables, whether raised conventionally or hydroponically, including tomatoes, snap beans, cabbage, carrots, beets and onions;
- horticultural specialties, including nursery stock, ornamental shrubs and ornamental trees and flowers;
- livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, ostrich, emus, fur-bearing animals, milk and eggs;
- aquaculture products, including fish, fish products, water plants and shellfish (provided the aquaculture products are grown and raised as opposed to merely harvested or caught);
- honey and beeswax produced from your own bees; and
- maple syrup and cider, provided the income from these operations is properly includable on federal Schedule F, *Profit or Loss From Farming*.

A person who rents farm property to others may also be engaged in the business of farming (see Question 5).

Forestry and logging, including the growing of Christmas trees, is **not** farming unless the forestry or logging products are used in the operation of a farm or are connected with an otherwise qualifying farm operation as described above (i.e., the income from these operations is properly reportable on federal Schedule F.)

You are **not** engaged in farming if your principal source of income is from providing agricultural services, such as soil preparation, veterinary services or farm labor. In addition, you are **not** engaged in farming if you manage or operate a farm for

a salary or fee. Furthermore, a person cultivating or operating a farm for recreation or leisure (e.g., a hobby farm) is **not** engaged in the business of farming.

For tax years beginning in 1998 and after, the following activities are also considered farming:

- the production of maple syrup or cider, regardless of whether the income is reportable on federal Schedule F; and
- the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

3. **What is considered gross income from farming for an individual?**

Gross income from farming is the total farm income reported on the individual's federal income tax return for the year. This includes:

- gross farm income from federal Schedule F, *Profit or Loss From Farming*;
- gross farm rents from federal Form 4835, *Farm Rental Income and Expenses*;
- your share of partnership or S corporation gross income from farming (this amount will be shown on your federal Schedule K-1);
- your share of distributable net income of an estate or trust from farming (this amount will be shown on your federal Schedule K-1); and
- gains from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797, *Sales of Business Property*. (Note: Gains from the sale of farm equipment or farm real estate are not includable in gross income from farming even though those gains may be reportable on Form 4797.)

For tax years beginning in 1998 and after, gross income from farming also includes:

- gross income from the production of maple syrup and cider, to the extent that income is not included in the items listed above; and
- gross income from the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

Gross income from farming for individuals is also listed in Appendix B.

4. **What is gross income from farming for a corporation?**

Gross income from farming is the total farm income reported on the corporation's federal income tax return for the year. This includes:

- gross receipts, less cost of goods sold, attributable to farming activities;
- gross rents from the rental of qualified agricultural property (including land and buildings), provided the terms of the rental satisfy the conditions described in Question 5 below;
- the corporation's share of partnership gross income from farming (this amount will be shown on the federal Schedule K-1 received by the corporation); and
- gains from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797, *Sales of Business Property*. (Note: Gains from the sale of farm equipment or farm real estate are not includable in gross income from farming, even though those gains may be reportable on Form 4797.)

For tax years beginning in 1998 and after, gross income from farming also includes:

- gross income from the production of maple syrup and cider, to the extent that income is not included in the items listed above; and

- gross income from the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

Note: A corporation that has both farm and non-farm income may find it helpful to complete a pro-forma federal Schedule F to determine its gross receipts, less cost of goods sold, from farming.

Gross income from farming for a corporation is also listed in Appendix D.

5. **Does the income which an individual or corporation receives from renting farm property to another person qualify as gross income from farming?**

The answer to this question depends upon how the rental of the property is set up.

Material Participation

If the rental is for a fixed amount per month or per year, or a fixed amount per acre (i.e., a cash rental agreement), or if the carrying costs of the property, such as property taxes, interest and insurance, constitute the rent, then the rental income does not constitute gross income from farming **unless** the person participates to a material extent in the operation or management of the farm. This kind of material participation rental income constitutes gross income from farming and is reported for federal purposes on Schedule F. (See Question 6 for information on material participation.) Also, see **Note** below.

Crop Share

If the amount of rental is a crop share (shared rental agreement; that is, the amount of rent is based upon the actual production of the land), then rental payments, whether made in cash or in kind, would constitute gross income from farming, regardless of whether you materially participate. For example, you rent your farmland to another person who is growing corn. The rental

payment is 20% of the corn produced on the property, or, at your election, a cash payment equal to the market value of 20% of the corn produced. In this instance, the rental income would constitute gross income from farming and is generally reported for federal income tax purposes on Form 4835. Also, see **Note** below.

Note: If you receive rental income from the rental of agricultural property (regardless of the type of rental) **and** you materially participate in the operation, the gross rental income you receive is reported on federal Schedule F and you may be subject to federal self-employment taxes.

6. **What does *participates to a material extent* mean for purposes of question 5?**

You *participate to a material extent* if you have an arrangement with your tenant for your participation and you meet one of the following four tests:

Test No. 1. You do **any** three of the following: (1) pay or stand good for at least half the direct costs of producing the crop; (2) furnish at least half the tools, equipment and livestock used in producing the crop; (3) consult with your tenant ; and (4) inspect the production activities periodically.

Test No. 2. You regularly and frequently make, or take an important part in making, management decisions substantially contributing to or affecting the success of the enterprise.

Test No. 3. You work 100 hours or more spread over a period of 5 weeks or more in activities connected with crop production.

Test No. 4. You do things which, considered in their total effect, show that you are materially and significantly involved in the production of farm commodities.

7. **I work on my neighbor's farm. Are the wages I receive considered gross income from farming?**

No. Wages you receive as a farm employee are not gross income from farming.

8. **My farm is set up as a corporation, and I receive wages from that corporation. Are those wages gross income from farming?**

No. Wages you receive from a farm corporation, even if you are the owner of the corporation, are not gross income from farming.

9. **What is federal gross income for purposes of determining whether I am an eligible farmer for tax year 1997?**

Gross income is income before the deduction of expenses. However, gross income from sales is after the deduction for cost of goods sold.

For an individual, gross income from all sources is all income you (and your spouse, if you are filing a joint federal return) receive during the tax year in the form of money, goods, property and services that is not exempt from **federal** income tax. For a list of items includable in the gross income of an individual, see Appendix A.

For a corporation, gross income is all income received by the corporation during the tax year that is not exempt from **federal** tax. For a list of items includable in the gross income of a corporation, see Appendix C.

10. **Do social security retirement benefits constitute gross income?**

This depends. Only the portion of the social security you receive **that is subject to federal income tax** is considered gross income. The amount of social security subject to federal tax varies with the level of your income from other sources.

11. **What is excess federal gross income for purposes of determining whether I am an eligible farmer for tax years 1998 and after?**

For an individual, excess federal gross income is federal gross income, computed as discussed in Question 9, reduced by the sum, not to exceed \$30,000, of the following items included in federal gross income:

- wages, salaries, tips and other employee compensation;
- interest and dividends;
- pension payments, including social security payments;
- those items of gross income that are includable in the computation of net earnings from self-employment for federal income tax purposes.

Example: Your federal gross income for the year is \$50,000. Included in gross income is \$15,000 of wages, \$10,000 of interest and dividends and \$25,000 of gross income from farming. (The \$25,000 of gross income from farming is included in determining your net earnings from self-employment.) Your excess federal gross income for the year is \$20,000 (\$50,000-\$30,000).

For a corporation, excess federal gross income is federal gross income, computed as discussed in Question 9, reduced by \$30,000.

12. **In addition to growing and harvesting my commodities, I also process those commodities to make them more valuable. Is all the income I receive from the sale of those commodities considered gross income from farming?**

No. Only the value of the commodities before they are processed constitutes gross income from farming. The value added by the processing is not considered gross income from farming. Processing means doing something to an agricultural commodity beyond what is needed to make it **initially** marketable.

For example, a person operates a dairy farm and also processes and bottles the milk for retail sale. If the person sold the raw milk to a processing plant, it would be worth \$14 per hundred weight. However, after pasteurizing and bottling, the person sells the milk for \$35 per hundred weight. Only the value of the raw milk (\$14) would be considered gross income from farming. The value added by the processing (\$21) would not be gross income from farming. However, it would be considered gross income from all sources for purposes of the gross income test.

Note: For tax years 1998 and after, gross income from farming includes income from the production of maple syrup and cider, and income from the sale of wine from a licensed farm winery, even though that income is from processed products.

13. **Under federal income tax rules, for purposes of individual estimated taxes, I am considered a farmer for 1997 if two-thirds of my gross income for 1996 or 1997 is from farming. Two-thirds of my gross income for 1996 was from farming, but I did not meet the test for 1997. Does the federal rule apply for purposes of the New York credit?**

No. New York law specifically provides that two-thirds of your gross income must be from farming for the year for which you are claiming the credit.

Note: For tax years 1998 and after, you may still qualify for this credit even though you are not considered a farmer for estimated tax purposes.

14. **If a married couple files a joint federal income tax return, do they use their separate or joint income in determining the gross income from farming and federal gross income?**

If you are married and file a joint return, your joint incomes must be used to determine if you are an eligible farmer.

15. **What if a married couple files separate returns?**

If you file separate returns, only your separate income is used to determine if you are an eligible farmer.

Caution: Although filing separate New York returns may enable you to meet the eligible farmer requirements, a married couple may generally file separate New York returns only if they file separate federal returns. Since many federal and New York tax benefits are eliminated or reduced when separate returns are filed, you may want to figure your federal and state taxes both ways to determine the best way to file. In addition, if you file separate returns and your farm property is owned jointly, your credit may be limited. See Part V.

Part III – Qualified Agricultural Property

1. What is qualified agricultural property?

Qualified agricultural property includes land and land improvements located in New York State that are used in agricultural production. It also includes structures and buildings (except for buildings used by the taxpayer for residential purposes) that are located on the land and used or occupied to carry out agricultural production.

Agricultural production means those activities discussed in Part II, Question 2.

Land used in agricultural production includes land under buildings which are qualified agricultural property, and land in support of a farm operation, such as farm ponds, drainage swamps, wetlands and access roads.

2. What structures are considered qualified agricultural property?

A structure or building qualifies if it is used either (1) in the raising and production for sale of agricultural commodities, or (2) for the storage of agricultural commodities for sale at a future time, or (3) for the storage of supplies or for the storage or servicing of equipment necessary for agricultural production.

A structure or building is not qualified agricultural property if it is used for (1) the processing of agricultural commodities, or (2) the retail merchandising of agricultural commodities, or (3) the storage of commodities for the personal consumption of the farmer or the farmer's family, or (4) the residence of the farmer or the farmer's immediate family.

For this purpose, *agricultural commodities* includes those items discussed in Part II, Question 2.

Note: If only a portion of a building or structure is used for qualified purposes, see Question 4.

3. What is considered processing for purposes of question 2?

Processing means doing something to a farm commodity beyond what is needed to make it initially marketable. For example, milk is initially marketable in raw form.

Accordingly, buildings used to produce and store the raw milk qualify for the credit. However, if a farmer also pasteurizes the milk and bottles it for sale, that operation is considered processing and the buildings or portions of buildings used for that operation do not qualify. The mere sorting, washing and packaging of fruits and vegetables is not considered processing.

When the processing carried on in an otherwise qualified building is only incidental to the main use of the building, or the building is used for processing only on a limited basis, the building is treated as qualified property.

4. What if only a portion of a building or structure is used for qualified agricultural production?

If only a portion of a building or structure is used for qualified agricultural production, then only that portion of the structure is qualified agricultural property. Only the school taxes paid on that portion qualify for the credit (see Part IV).

5. When would a building or structure not qualify because it is being used for retail sales of farm commodities?

Any building or structure or portion thereof that is used for the retail sale of an agricultural or horticultural product cannot qualify. For example, a roadside stand or store in which agricultural products are sold to the public would not qualify.

6. **We operate a plant nursery. We raise all our own flowers and plants in greenhouses. Each spring and summer, we open the greenhouses to the public so they can pick out their purchases themselves. Is this considered using the greenhouses for retail sale?**

No. This activity would be considered incidental to the main function of raising horticultural products in the greenhouses. Accordingly, the greenhouses would be qualified agricultural property.

7. **Residential property is not qualified agricultural property. What is residential property in the case of an individual farmer?**

Residential property includes a house, mobile home, etc., and any other buildings associated with it, such as a garage or shed, that are used by the farmer or his or her individual family for residential purposes.

8. **What is residential property in the case of a corporate farmer?**

Property described in Question 7 that is held by a corporation is considered used for residential purposes if it is used as a residence by any of the executive officers of the corporation.

9. **Does housing provided to regular or essential farm employees meet the definition of qualified agricultural property?**

Yes. Regular employees are those who are usually and customarily hired for raising and producing a farm product. Essential employees are those without whose help a necessary aspect of farm production could not take place (such as workers hired to plant or harvest a crop). Employees are regular or essential as long as their duties are primarily connected with farming operations rather than processing, retail sale or other non-farm operations. Housing for the farm owner and the immediate family of

the farm owner does not qualify. However, separate housing for children or other relatives of the farmer will qualify if these persons are regular or essential employees of the farm operation **and** if they don't have an ownership interest in the farming operation.

10. **Part of my farmland has been set aside or retired under a federal supply management or soil conservation program. Is that property qualified agricultural property?**

Yes.

11. **I own several pieces of agricultural property that are not connected or adjacent to each other. Are all these parcels qualified agricultural property?**

All parcels that are located in New York State and used in agricultural production are considered as one farm even if they are not connected or adjacent to each other. However, only the parcels that are actually used in producing agricultural products qualify. Parcels that are held for investment or other non-farm purposes do not qualify.

12. **A group of eligible farmers form a partnership to construct and operate a storage facility for the partners' produce. The structure is located on property owned by the partnership. However, the partnership itself does not raise any produce. Is this property qualified agricultural property?**

No. The law provides that qualified agricultural property means land used in agricultural production and structures located **on that land** that are used to carry out that production. In this case, the land on which the building is located is not being used for agricultural production by the partnership. Accordingly, the school taxes paid on the land and storage facility structure would not qualify for the credit.

13. **Part of my farm property consists of woodland. Does all or a part of that woodland constitute qualified agricultural property?**

If the woodland property is actually used in agricultural production or for the production of woodland products that are used in the farm operation, the property would qualify. For example, woodland used for pasturing cattle would qualify. Furthermore, the woodland property would qualify if it is an adjunct to agricultural property, such as in providing erosion control or wind protection to the agricultural property.

14. **I own farm property that I rent to another person. The other person actually uses the property for agricultural production. Is this property qualified agricultural property for me?**

Yes. Accordingly, if you are an eligible farmer, you may claim a credit for the taxes paid on the property. However, the person that rents the property from you may not claim the credit because he or she does not own the property.

Part IV: Eligible Taxes

1. **What type of property taxes qualify for this credit?**

Only real property taxes levied by a school district on qualified agricultural property (see Part III) **owned** by the taxpayer qualify for the credit. Property taxes levied by towns, villages, cities or other municipal governments do not qualify for the credit.

2. **What are real property taxes levied by a school district?**

Real property taxes levied by a school district include all property taxes, special ad valorem levies and special assessments levied by a school district. Included are taxes levied by a school district for the support of local libraries. Penalties and interest are not included.

3. **I am an eligible farmer but I rent qualified agricultural property from another person. My rental agreement provides that I must pay the school district property taxes on that property. Can I claim the credit for those taxes?**

No. Only school district property taxes paid on qualified agricultural property **owned** by an eligible farmer qualify for the credit. This is true even if the rental payment is based upon the amount of taxes paid on the land, or the rental agreement requires the lessee to actually pay the taxes. However, the person from whom you rent the land may claim the credit for these taxes if that person is an eligible farmer. (See Part III, Question 14).

4. **In 1996, I did not pay my school taxes on my qualified agricultural property. However, in 1997 I paid both the back taxes for 1996 and the current taxes for 1997 on that property. Are both the 1996 and 1997 taxes eligible for the credit?**

Yes. The law only requires that the taxes be paid in tax years 1997 or thereafter to qualify for the credit.

5. **I own agricultural property jointly with my spouse. What amount of taxes paid on the property may I include in computing my credit?**

If you file a joint return with your spouse, you may include the total taxes paid on the jointly held qualified agricultural property in computing the credit. However, the joint incomes of you and your spouse will be used to determine if you are an eligible farmer (see Part II) or whether you are subject to the credit limitation based on income (See Part VI).

If you and your spouse jointly own qualified agricultural property but file separate New York returns, you may include only one-half of the taxes paid on qualified agricultural property in computing your credit, unless you **both** agree to an unequal division. If you both agree, you may divide the taxes any way you wish. You must also divide the acres of qualified agricultural property in the same manner as you divide the eligible taxes. In addition, the related party rules (see Part V) may limit the credit if separate returns are filed.

6. **What if I purchase a farm during the year or purchase additional farmland during the year. How do I determine the amount of taxes paid during the year?**

The documents that were prepared when you closed on the property usually indicate the amount of school taxes paid by the seller that are prorated to the purchaser. This will occur when you purchase property after the date when the school tax bills are issued. You may include your prorated amount of school taxes in determining your credit for the year of purchase. You may also include any school taxes which you paid directly to the school district during the year.

7. **I started my farm operation during the year. May I claim all the school taxes paid during that year for purposes of the credit, or is some proration required?**

You may claim all the taxes you actually paid during the year in computing the credit. No proration is required even if you operated your farm for only part of the year.

8. **My school tax bill only shows the total taxes paid on all my real property, including my personal residence and other nonqualified property. How can I determine the amount of the total taxes applicable to my personal residence or other nonqualified property?**

Your local assessor should be able to tell you the value of your residence and other nonqualified property because this information is often required for agricultural assessment purposes. If this information is not currently available, your local assessor may be willing to make the determination for you. In general, an assessor's determination of the value of the residence and other nonqualified property will be accepted by the Tax Department.

9. **What if my local assessor cannot supply this information, or what if I do not agree with the value assigned by the assessor. Do I have any other options?**

Yes. You may hire a private appraiser to determine the values to be assigned to your residence or other non-qualified property. In addition, you may use any other reasonable method, such as basing the value on the recent sale price of similar property in your residence area, to determine the value. However, in these cases, you must be able to substantiate how you determined the value.

10. **What is considered the residence for purposes of determining its value?**

Your residence includes the house, mobile home, etc., and any other buildings associated with it, such as garages and storage sheds, that are used for residential purposes. Your residence also includes any land abutting it that is used for residential purposes, such as lawns and gardens.

11. **Only a portion of one of my buildings is qualified agricultural property. Using the methods described in Questions 8 and 9 above, I can only determine the value of the entire building. How do I determine the value of the portion of the building that is qualified agricultural property?**

You may allocate the total value of the building between the qualified and nonqualified portions using any reasonable method. Reasonable methods would include, but are not limited to, methods based upon the percentage of square footage or time used for each purpose.

12. **Our farm is located in two different school districts. Can we claim the credit for the taxes paid to both districts on our qualified agricultural property?**

Yes. The credit does not depend on which school district you pay your taxes to.

13. **If I am a partner in a partnership, a shareholder of a New York S corporation, or the beneficiary of an estate or trust that owns qualified agricultural property, may I claim a credit for my share of the eligible taxes paid by the entity?**

Yes. However, you may claim the credit only if you are an eligible farmer (see Part II).

Part V: Base Acreage and Related Party Rules

1. What is the base acreage?

The base acreage is used to determine the amount of the credit. The credit equals the total eligible taxes paid on qualified agricultural property where the acreage does not exceed the base acreage amount, and 50% of the eligible taxes paid on acres in excess of the base acreage amount. However, this credit amount is subject to the credit limitation based on income (see Part VI).

2. What are the base acreage amounts?

The base acreage amounts are 100 acres for tax years beginning in 1997, 175 acres for tax years beginning in 1998, and 250 acres for tax years beginning in 1999 and thereafter.

3. Can the base acreage amount be applied to any property I choose, such as the property that contains the farm buildings?

No. The base acreage must be applied proportionately to all acres of qualified agricultural property owned by the farmer. For example, if a farmer owns 500 acres of qualified agricultural property in 1997, when the base acreage is 100 acres, the farmer would get a full credit for one-fifth of the school taxes paid on the property (including the school taxes paid on farm buildings located on the land). Note: The farmer would also get a credit for 1997 for 50% of the remaining four-fifths of the taxes paid on the property.

4. What are the related party rules?

The base acreage of an eligible farmer may be limited if the farmer and a related person each own qualified agricultural property on March 1 of the taxable year. In this case, a single base acreage limitation applies to all

Of the related persons, and can be divided among them in whatever manner they elect.

A different division can be elected each year. If the farmer and the related person(s) fail to elect a division of the base acreage, it will be divided equally among them.

Example: For 1997, when the base acreage is 100, the farmer and a related person elect to allocate the base acreage 60% to the farmer and 40% to the related person. The farmer is allotted 60 acres of the base acreage, and the related person is allotted 40. If they do not elect, 50 acres is allotted to each. For 1998, when the base acreage is 175, they elect to allocate the base acreage 80% to the farmer and 20% to the related person, in which case the farmer is allotted 140 acres and related person is allotted 35 acres. If they do not elect, 87½ acres is allotted to each.

5. Who is a related person to an individual farmer?

If you are an individual farmer, your related persons include:

- your spouse (if you and your spouse are filing a joint return, it is not necessary to allocate the single base acreage limitation amount (e.g., 100 acres in 1997) between yourselves);
- any "C" corporation (a corporation that is not a New York S corporation) that is subject to the Article 9-A franchise tax and of which you and your spouse, if you are married, collectively own more than 50% of the stock; and
- any estate or trust in which you, and your spouse, if you are married, collectively own more than 50% of the beneficial interest.

To determine whether you own more than 50% of the stock of a corporation, stock owned by a corporation, partnership or estate or trust in which you have an ownership interest is deemed to be owned by you in proportion to your interest.

Example 1: You and your spouse are filing separate New York State returns for the year. You and your spouse, either individually or jointly, each owned qualified agricultural property on March 1 of the tax year. You and your spouse are related persons and must allocate the base acreage amount between yourselves.

Example 2: You owned qualified agricultural property on March 1, 1997. Your spouse also owns 75% of the stock in a "C" corporation that also owned qualified agricultural property on March 1, 1997. You and the corporation are related persons.

6. **Who is a related person if the farmer is a corporation?**

If the farmer is a corporation, a related person to the corporation includes:

- another corporation subject to the corporation franchise tax (Article 9-A) where both corporations are members of the same controlled group as defined in section 267(f) of the Internal Revenue Code;
- an individual, estate or trust that owns more than 50% of the corporation's stock;
- another corporation subject to tax under the Article 9-A franchise tax if the same person owns more than 50% of the value of the outstanding stock of each corporation; and
- an estate or trust of which the corporation owns, directly or indirectly, more than 50% of the capital, profits or beneficial interest.

Example: Corporation A and Corporation B each own qualified agricultural property on March 1, 1997. The same individual owns 100% of the stock of both corporations. Corporations A and B are related persons.

7. **I am an eligible farmer and own qualified agricultural property individually. I also belong to a farming partnership that owns qualified agricultural property. Do I get 200 base acres in 1997, 100 for my own property and 100 for the partnership property?**

No. Each eligible farmer is entitled to only one base acreage amount of 100 acres. Your own acreage and your share of the partnerships acreage are added together to determine the acreage in excess of the 100 acres.

8. **Do partners in a partnership, shareholders of New York S corporations or estates and trusts and their beneficiaries have to divide the allowable base acreage amount (e.g., 100 acres for 1997) among themselves?**

No. Each individual taxpayer is entitled to his own base acreage amount. For example, if a partnership has three partners, each partner is entitled to a base acreage amount of 100 acres for 1997.

However, the base acreage amount of 100 acres may be limited if any of the partners, shareholders or beneficiaries are subject to the related party rules (see Question 4). For example, a husband and wife are shareholders of a New York S corporation that owns qualified agricultural property. Since a husband and wife are related parties, they are entitled to a single base acreage amount of 100 acres in 1997.

Part VI: Credit Limitation Based on Income

1. What is the credit limitation based upon income?

The income limitation reduces or eliminates the credit for higher income taxpayers. The limitation is based on New York adjusted gross income (individuals) or entire net income (corporations) for tax years beginning in 1997. The limitation is based on modified adjusted gross income (individuals) and modified entire net income (corporations) for tax years beginning in 1998 and after.

2. How does the credit limitation apply for tax year 1997?

For individuals, the amount of credit allowable, after applying the base acreage limitation, is further limited if the farmer's New York adjusted gross income is between \$100,000 and \$150,000. If the farmer's New York adjusted gross income is \$150,000 or more, no credit is allowable. Married taxpayers filing a joint return use their joint New York adjusted gross income to determine the limitation. Married taxpayers filing separate returns use their separate New York adjusted gross incomes.

For a corporation, the limitation is the same as for individuals, except that the limitation is based upon the corporation's entire net income (before any allocation to out-of-state operations).

3. How does the credit limitation work for tax year 1997 when my adjusted gross income or entire net income is between \$100,000 and \$150,000?

If your New York adjusted gross income (individuals) or entire net income (for corporations) is between \$100,000 and \$150,000, your credit must be reduced by a percentage. The percentage is determined by a fraction, whose numerator is the

amount (limited to \$50,000) by which the adjusted gross income or entire net income exceeds \$100,000, and whose denominator is \$50,000.

Example: An eligible farmer, after application of the base acreage limitation, is entitled to a potential credit of \$10,000. The farmer has New York adjusted gross income of \$130,000. The numerator of the fraction is \$30,000 and the denominator is \$50,000, resulting in a percentage of 60%. Accordingly, the potential credit of \$10,000 must be reduced by \$6,000 ($\$10,000 \times 60\%$), resulting in an allowable credit of \$4,000.

4. How does the credit limitation apply for tax years 1998 and after?

The credit limitation works the same way as described in Questions 2 and 3, except that modified New York adjusted gross income or modified entire net income is used in place of New York adjusted gross income or entire net income, respectively.

5. What is modified New York adjusted gross income and modified entire net income?

For individuals, *modified New York adjusted gross income* means New York adjusted gross income for the tax year reduced by the amount of principal paid on farm indebtedness during the year.

For corporations, *modified entire net income* means entire net income for the tax year (before any allocation to out-of-state operations), reduced by the amount of principal paid on farm indebtedness during the tax year.

Farm indebtedness means debt incurred or refinanced which is secured by farm property, where the proceeds of the debt are used for expenditures incurred in the business of farming.

Example: The farmer in the Question 3 example made principal payments on farm indebtedness of \$10,000 during 1998. Accordingly, the farmer's modified New York adjusted gross income is \$120,000. For 1998, the numerator of the fraction is therefore \$20,000, resulting in a percentage of 40% ($\$20,000/\$50,000$). The potential credit of \$10,000 must be reduced by 40% ($\$4,000$), resulting in credit of \$6,000.

6. **I am married filing a joint New York income tax return. Must I include my spouse's income in determining the income limitation?**

Yes. If you file a joint return, both spouses' incomes must be included in determining the limitation.

7. **What if my spouse and I elect to file separate returns?**

If you file separate New York returns, only the farmer's separate income will be used to determine the income limitation. In general, filing separate returns will only be beneficial for purposes of the credit limitation if your joint New York adjusted gross income (1997) or joint modified adjusted gross income (1998 and after) exceeds \$100,000.

Caution: In most instances, a married couple may file separate New York returns only if they file separate federal returns. Since many federal and state tax benefits are eliminated or reduced when separate returns are filed, you may want to figure your federal and state taxes both ways to determine the best way to file.

8. **I am a nonresident who owns qualified agricultural property in New York. How do I determine my New York adjusted gross income or modified New York adjusted gross income for purposes of the limitation?**

Your New York adjusted gross income or modified New York adjusted gross income

is determined as if you (and your spouse, if filing a joint return) were a New York State resident for the entire tax year. That is, your income from **all** sources will be used to determine if you are subject to the limitation.

9. **If the farming business is a partnership or S corporation, is the income limitation determined using the income of the partnership or corporation?**

No. Each partner or shareholder will determine their limitation based upon the income reported on their own returns. Of course, the partner's or shareholder's share of income from the partnership or corporation will be included in the computation.

Part VII: Credit Recapture

1. Do I have to recapture all or part of the credit if my qualified agricultural property is converted to nonqualified use?

If qualified agricultural property is converted to nonqualified use, the following rules apply:

- No credit is allowed for the year in which the property is converted. This is true even though the property may have been qualified property for part of the year. No proration of the credit is permitted.
- If the conversion takes place before the end of the second tax year following the year in which you **first** claimed a credit, the entire credit claimed on the converted property in the two previous years must be added back in the year of the conversion.

If the property is converted after the end of the second tax year following the year in which the credit is first claimed, there is no recapture and no addback is made.

Example 1: A farmer first claims the credit for tax year 1997. On August 1, 1999, all the farmer's qualified property is converted to nonqualified use. In this instance, no credit will be allowed for 1999, and the entire amount of the credits claimed for 1997 and 1998 must be added back in 1999.

Example 2: A farmer first claims the credit for tax year 1997. On June 1, 2000, the entire property is converted to nonqualified use. In this instance, no credit is allowed for the year 2000. However, since the conversion takes place after the end of the second year (1999) following the year in which the credit was first claimed (1997), the farmer is not required to add back the credit claimed in previous years.

2. What constitutes a conversion to nonqualified use?

Conversion means an outward or affirmative act changing the use of agricultural land. The idling, nonuse or sale of the land is not by itself a conversion.

Example 1: A farmer sells 100 acres of land to a developer. The developer actually builds a housing development on the land, and as a result the land is no longer used for agricultural production. This would be considered a conversion to nonqualified use.

Example 2: A farmer discontinues farming, but continues to hold the land for investment purposes. Neither the farmer nor anyone else uses the land for agricultural production. This would not constitute a conversion to nonqualified use. Note: Even though this is not a conversion, the farmer cannot claim a credit in years after the year farming operations discontinue because the land is no longer used for agricultural production. However, if the individual qualifies as an eligible farmer in the last year of operation, the individual may claim the credit for that last year.

Example 3: You sell your qualified agricultural property to another person. That person continues to use the property for agricultural production. No recapture is required as long as the property continues to be used for agricultural production, and you may also claim the credit for your share of the taxes paid in the year of sale, if you continue to qualify as an eligible farmer for that year. However, if the property is converted before the end of the second year after **you** first claimed the credit, recapture would be required. In addition, the person who purchased the property will also have to recapture the credit he claimed on the property if the conversion takes place before the end of the second year after he claimed the credit.

3. **What if I convert only a part of my qualified agricultural property?**

If you convert only a part of your qualified agricultural property, the following rules apply:

- In the year of conversion, no credit will be allowed for the portion of the property converted.
- If the conversion takes place before the end of the second year following the year in which you first claimed the credit, the credit allowed on the converted property for the previous tax years must be added back in the year of conversion.

4. **How do I determine the amount of credit allowed in prior years on the part of the property that is converted?**

The amount of credit that must be recaptured is that portion of the credit that bears the same ratio to the total credit as the amount of land converted bears to the total amount of qualified land before the conversion.

Example: You own 500 acres of qualified agricultural property and convert 100 acres of that property during the recapture period. You must recapture (add back) one-fifth (100/500) of the credit claimed for the previous years.

5. **How do I determine the taxes paid on my remaining qualified property when only a portion of the land is converted?**

If you continue to own the property after the conversion to nonqualified use, and the taxes on the converted property are included as part of your total tax bill (i.e., the converted property is not on a separate deed), you may allocate the total taxes to the converted land on the basis of the amount of acreage converted to total acreage covered by the tax bill.

If the converted land is sold, the closing documents will show the amount of school taxes reimbursed to you by the buyer. You

must reduce your current year's tax paid by the amount of these reimbursed taxes in determining the credit.

6. **Are there any exceptions to the recapture rule even though a conversion may have taken place?**

Yes. Recapture is **not** required if the property is converted to nonqualified use by reason of an "involuntary conversion." An involuntary conversion is a conversion because of casualty or natural disaster, theft, or by condemnation (or by agreement under a threat of condemnation), such as when a governmental agency takes your land under the eminent domain rules.

Example: The state takes by eminent domain 20 acres of your farmland to be used for a new highway. The condemnation is an involuntary conversion and no recapture is required. However, you may not claim the credit for that land in the year of the conversion.

7. **I qualified for the credit in 1997. In 1998, I still farm the same land, but I do not qualify for the credit because I do not meet the gross income test or because my income exceeds the credit limitation amount. Am I required to recapture any part of the credit claimed in 1997?**

No. This is not considered a conversion, and no credit recapture is required.

8. **I am a partner in a partnership (or a shareholder of a New York S corporation) that owns qualified agricultural property. In the previous year, I claimed my share of the credit attributable to the partnership (or corporation). In the current year, I sell my interest in the partnership or my stock in the corporation. Is this sale considered a conversion requiring recapture?**

No. The sale by itself is not a conversion provided the partnership or corporation continues to use the land for agricultural production.

Part VIII: Disallowance of Deduction for School Taxes

- 1. I deduct my school taxes on agricultural property as an expense of doing business for federal income tax purposes. Do I have to make an adjustment for state income tax purposes since I am receiving a credit for all or part of those taxes?**

Yes. You must include the amount of the credit in your New York adjusted gross income or entire net income in the tax year following the year for which the credit is allowed. For example, for tax year 1997 you claim a farmers' school tax credit of \$5,000. You must include the \$5,000 in your New York adjusted gross income or entire net income for tax year 1998.

Part IX: Estates and Trusts and Their Beneficiaries

- 1. Can an estate or trust that is engaged in the business of farming claim the credit on its fiduciary income tax return?**

Yes, provided the estate or trust is an eligible farmer. However, if an estate or trust distributes all or part of its income currently, its acres of qualified agricultural property and eligible taxes must be allocated entirely or in part to its beneficiaries.

- 2. How does the estate or trust allocate its acres of qualified agricultural property and eligible taxes among itself and the beneficiaries?**

If the estate or trust does not distribute any of its income currently (i.e., the trust is an accumulating trust), then the entire amount of acres of qualified agricultural property and eligible taxes is allocated to the estate or trust and is used to compute the estate's or trust's credit.

If the estate or trust distributes all or part of its income currently, the acres of qualified agricultural property and eligible taxes must

be allocated between the estate or trust and its beneficiaries. These amounts are allocated on the same basis as the income of the estate or trust is allocated.

Example: A trust distributes 75% of its income to the beneficiaries and retains the other 25%. The trust would allocate 75% of its acres of qualified agricultural property and eligible taxes to the beneficiaries and 25% to itself. If the trust qualifies as an eligible farmer, it computes its credit based on its 25% share of acres and taxes. In addition, if the beneficiaries individually qualify as eligible farmers, they will compute their credit based on their 75% share of the acres and taxes. (For the base acreage amounts applicable to estates and trusts and their beneficiaries, see Part V, Question 8).

Note: Any beneficiary who qualifies as an eligible farmer may claim the credit based upon his or her share of acres and taxes, even if the estate or trust or some of the other beneficiaries do not qualify to claim the credit on their share. Likewise, the estate or trust, if it qualifies as an eligible farmer, may claim the credit on its share of acres and taxes even if the beneficiaries do not qualify to claim the credit on their shares.

- 3. How does an estate or trust determine if it is an eligible farmer?**

An estate or trust uses the same rules applicable to individual farmers. (See Part II.)

- 4. How does an estate or trust compute its New York adjusted gross income for purposes of the credit limitation based on income?**

The New York adjusted gross income of an estate or trust is its federal adjusted gross income increased or decreased by its net share of New York addition and subtraction modifications. For more information, see the Form IT-205-I, *Instructions for Form IT-205, Fiduciary Income Tax Return*.

Appendix A Federal Gross Income for Individuals

Federal gross income from all sources for individuals is the sum of the following:

- 1) Wages, salaries, tips, etc.
- 2) Taxable interest.
- 3) Dividends.
- 4) Taxable refunds of state and local taxes.
- 5) Alimony received.
- 6) Gross business income from federal Schedule C.
- 7) Gross receipts from federal Schedule C-EZ.
- 8) Capital gains from federal Schedule D. Include only short and long-term gains. You cannot net losses against the gains. However, reduce your total gains reported on Schedule D by the amount of any gains from partnerships, S corporations, estates and trusts, and gain from Form 4797 that are reported on Schedule D.
- 9) Gains on sales of business property from federal Form 4797. You cannot offset losses against the gains.
- 10) Taxable IRA distributions, pensions, annuities and social security benefits.
- 11) Gross rental income from federal Schedule E. This is the total rents received before any deduction for expenses.
- 12) Gross royalty income from federal Schedule E.
- 13) Your taxable net income from an estate or trust from federal Schedule E.
- 14) Income from a REMIC reported on federal Schedule E.
- 15) Gross farm rental income from federal Form 4835.
- 16) Gross farm income from federal Schedule F.
- 17) Your distributive share of gross income from a partnership or limited liability company treated as a partnership for federal tax purposes.
- 18) Your pro-rata share of gross income from an S corporation
- 19) Unemployment compensation
- 20) "Other income" reported on federal Form 1040, not reported with any of the items listed above.

Appendix B Federal Gross Income From Farming for Individuals

- 1) Gross farm income from federal Schedule F.
- 2) Gross farm rents from federal Form 4835.
- 3) Your distributive share of a partnership's gross income from farming. A partnership includes a limited liability company that is treated as a partnership for federal income tax purposes.
- 4) Your share of distributable net income from farming of an estate or trust.
- 5) Your pro-rata share of an S corporation's gross income from farming.
- 6) Gains (not losses) from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797. (Note: Gains from the sale of farm equipment or farm real estate are not includable in gross income from farming even though those gains may be reportable on Form 4797.)

For tax years beginning in 1998 and after, gross income from farming also includes:

- 7) Gross income from the production of maple syrup and cider, to the extent that income is not included in items 1-6 above.
- 8) Gross income from the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

Appendix C

Federal Gross Income for Corporations

Federal gross income from all sources for a corporation is the sum of the following:

- 1) Gross profit from federal Form 1120 or 1120-A.
 - 2) Dividends, interest, gross rents and gross royalties from federal Form 1120 or 1120-A.
 - 3) Long and short term capital gains from Schedule D (Form 1120). Include only gains from Schedule D. Losses cannot be netted against gains. Do not include any gain included in Schedule D that was carried forward from federal Form 4797.
 - 4) Other income (not loss) includable on federal Form 1120 or 1120-A (do not include the corporation's share of income from a partnership).
 - 5) The corporation's share of the gross income from a partnership or limited liability company treated as a partnership.
 - 6) Gains from federal Form 4797. You cannot offset losses against gains.
- 2) Gross rents from the rental of qualified agricultural property (including land and buildings), provided the terms of the rental satisfy the conditions described in Part II, Question 5.
 - 3) The corporation's share of partnership gross income from farming. A partnership includes a limited liability company treated as a partnership for federal tax purposes.
 - 4) Gains (not losses) from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797. (Note: Gains from the sale of farm equipment or farm real estate is not gross income from farming, even though gains may be reportable on Form 4797.)

For tax years beginning in 1998 and after, gross income from farming also includes:

- 5) Gross income from the production of maple syrup and cider, to the extent that income is not included in Items 1-4.
- 6) Gross income from the sale of wine from a licensed farm winery as provided for in Article 6 of the Alcoholic Beverage Control Law.

Appendix D

Federal Gross Income *From Farming* for Corporations

- 1) Gross receipts, less cost of goods sold, attributable to farming activities.

Note: A corporation that has both farm and non-farm income may find it helpful to complete a pro-forma federal Schedule F to determine its gross receipts, less cost of goods sold, from farming.

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