

SENATE BILL No. 194

March 14, 1991, Introduced by Senator V. SMITH and referred to the Committee on Finance.

A bill to amend section 10 of Act No. 116 of the Public Acts of 1974, entitled

"Farmland and open space preservation act,"

as amended by Act No. 423 of the Public Acts of 1988, being section 554.710 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 10 of Act No. 116 of the Public Acts of
2 1974, as amended by Act No. 423 of the Public Acts of 1988, being
3 section 554.710 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 10. (1) An owner of farmland and related buildings
6 covered by a development rights agreement meeting the require-
7 ments of this act who is required or eligible to file a return as
8 an individual or a claimant under the state income tax act may
9 claim a credit against the state income tax liability for the

1 amount by which the property taxes on the land and structures
2 used in the farming operation, including the homestead,
3 restricted by the development rights agreement exceeds 7% of the
4 household income as defined in chapter 9 of the state income tax
5 act, excluding ~~any~~ A deduction if taken under section 613 of
6 the internal revenue code OF 1986, 26 U.S.C. 613. For the pur-
7 poses of this section, all of the following apply:

8 (a) A partner in a partnership is considered an owner of
9 farmland and related buildings covered by a development rights
10 agreement that are owned by the partnership. A partner shall be
11 considered to pay a proportion of the property taxes on that
12 property equal to the partner's share of ownership of capital or
13 distributive share of ordinary income as reported by the partner-
14 ship to the internal revenue service or, if the partnership is
15 not required to report that information to the internal revenue
16 service, as provided in the partnership agreement or, if there is
17 no written partnership agreement, a statement signed by all the
18 partners. A partner claiming a credit under this section based
19 upon the partnership agreement or a statement shall file a copy
20 of the agreement or statement with his or her income tax return.
21 If the agreement or statement is not filed, the department of
22 treasury shall deny the credit. All partners in a partnership
23 claiming the credit allowed under this section shall compute the
24 credit using the same basis for the apportionment of the property
25 taxes.

26 (b) A shareholder of a corporation that has filed a proper
27 election under subchapter S of chapter 1 of subtitle A of the

1 internal revenue code OF 1986, 26 U.S.C. 1361 TO 1379 is
2 considered an owner of farmland and related buildings covered by
3 a development rights agreement that are owned by the
4 corporation. A shareholder shall be considered to pay a propor-
5 tion of the property taxes on that property equal to the
6 shareholder's percentage of stock ownership for the tax year as
7 reported by the corporation to the internal revenue service.
8 This subdivision is effective for tax years beginning after
9 1987.

10 (c) An individual in possession of property for life under a
11 life estate with remainder to another person or holding property
12 under a life lease is considered the owner of that property if it
13 is farmland and related buildings covered by a development rights
14 agreement.

15 (d) If a trust holds farmland and related buildings covered
16 by a development rights agreement and an individual is treated
17 under ~~sections 671 to 679~~ SUBPART E OF SUBCHAPTER J of the
18 internal revenue code OF 1986, 26 U.S.C. 671 TO 679, as the owner
19 of that portion of the trust that includes the farmland and
20 related buildings, that individual is considered the owner of
21 that property.

22 (e) An individual who is the sole beneficiary of a trust
23 that is the result of the death of that individual's spouse is
24 considered the owner of farmland and related buildings covered by
25 a development rights agreement and held by the trust if the trust
26 conforms to all of the following:

1 (i) One hundred percent of the trust income is distributed
2 to the beneficiary in the tax year in which the trust receives
3 the income.

4 (ii) The trust terms do not provide that any portion of the
5 trust is to be paid, set aside, or otherwise used in a manner
6 that would qualify for the deduction allowed by section 642(c) of
7 the internal revenue code OF 1986, 26 U.S.C. 642.

8 (2) An owner of farmland and related buildings covered by a
9 development rights agreement meeting the requirements of this act
10 to whom subsection (1) does not apply may claim a credit under
11 the single business tax act, Act No. 228 of the Public Acts of
12 1975, as amended, being sections 208.1 to 208.145 of the Michigan
13 Compiled Laws, for the amount by which the property taxes on the
14 land and structures used in farming operations restricted by the
15 development rights agreement exceeds 7% of the adjusted business
16 income of the owner as defined in section 36 of Act No. 228 of
17 the Public Acts of 1975, being section 208.36 of the Michigan
18 Compiled Laws, plus compensation to shareholders not included in
19 adjusted business income, excluding any deductions if taken under
20 section 613 of the internal revenue code OF 1986, 26 U.S.C. 613.
21 When calculating adjusted business income for tax years beginning
22 before 1987, federal taxable income shall not be less than zero
23 for the purposes of this subsection only. A participant is not
24 eligible to claim a credit and refund against the state single
25 business tax unless the participant demonstrates that the
26 participant's agricultural gross receipts of the farming
27 operation exceed 5 times the property taxes on the land for each

1 of 3 out of the 5 tax years immediately preceding the year in
2 which the credit is claimed. This eligibility requirement does
3 not apply to those participants who have executed farmland devel-
4 opment rights agreements under the act before January 1, 1978. A
5 participant may compare, during the contract period, the average
6 of the most recent 3 years of agricultural gross receipts to
7 property taxes in the first year that the participant entered the
8 program under the present contract in calculating the gross
9 receipts qualification. Once an election is made by the partici-
10 pant to compute the benefit in this manner, all future calcula-
11 tions shall be made in the same manner. THIS SUBSECTION APPLIES
12 TO THE OWNER OF FARMLAND AND RELATED BUILDINGS SUBJECT TO A
13 DEVELOPMENT RIGHTS AGREEMENT IN EFFECT ON DECEMBER 31, 1992. THE
14 OWNER OF FARMLAND AND RELATED BUILDINGS SHALL NOT CLAIM A CREDIT
15 UNDER THIS SUBSECTION UNDER EITHER OF THE FOLLOWING
16 CIRCUMSTANCES:

17 (A) IF THE DEVELOPMENT RIGHTS AGREEMENT BECOMES EFFECTIVE
18 AFTER DECEMBER 31, 1992.

19 (B) IF A CURRENT DEVELOPMENT RIGHTS AGREEMENT IS RENEWED
20 AFTER DECEMBER 31, 1992.

21 (3) If the farmland and related buildings covered by a
22 development rights agreement are owned by more than 1 owner, each
23 owner is allowed to claim a credit under this section based upon
24 that owner's share of the property tax payable on the farmland
25 and related buildings. The department of treasury shall consider
26 the property tax equally apportioned among the owners unless a
27 written agreement signed by all the owners is filed with the

1 return, which agreement apportions the property taxes in the same
2 manner as all other items of revenue and expense. If the prop-
3 erty taxes are considered equally apportioned, a husband and wife
4 shall be considered 1 owner, and a person with respect to whom a
5 deduction under section 151 of the internal revenue code OF 1986,
6 26 U.S.C. 151 is allowable to another owner of the property shall
7 not be considered an owner.

8 (4) A beneficiary of an estate or trust to which subsection
9 (1) does not apply is entitled to the same percentage of the
10 credit provided in this section as that person's percentage of
11 all other distributions by the estate or trust.

12 (5) If the allowable amount of the credit claimed exceeds
13 the state income tax or the state single business tax otherwise
14 due for the tax year or if there is no state income tax or the
15 state single business tax due for the tax year, the amount of the
16 claim not used as an offset against the state income tax or the
17 state single business tax, after examination and review, shall be
18 approved for payment to the claimant in accordance with Act
19 No. 122 of the Public Acts of 1941, being sections 205.1 to
20 205.31 of the Michigan Compiled Laws. The total credit allowable
21 under this act and chapter 9 of the state income tax act or the
22 single business tax act, Act No. 228 of the Public Acts of 1975,
23 as amended, shall not exceed the total property tax due and pay-
24 able by the claimant in that year. The amount the credit exceeds
25 the property tax due and payable shall be deducted from the
26 credit claimed under this act.

1 (6) For purposes of audit, review, determination, appeals,
2 hearings, notices, assessments, and administration relating to
3 the credit program provided by this section, the state income tax
4 act or single business tax act, Act No. 228 of the Public Acts of
5 1975, applies according to which tax the credit is claimed
6 against. If an individual is allowed to claim a credit under
7 subsection (1) based upon property owned or held by a partner-
8 ship, S corporation, or trust, the department of treasury may
9 require that the individual furnish to the department a copy of a
10 tax return, or portion of a tax return, and supporting schedules
11 that the partnership, S corporation, or trust files under the
12 internal revenue code.

13 (7) The department of treasury shall account separately for
14 payments under this act and not combine them with other credit
15 programs. A payment made to a claimant for a credit claimed
16 under this act shall be issued by 1 or more warrants made out to
17 the county treasurer in each county in which the claimant's prop-
18 erty is located and the claimant unless a copy of the receipt
19 showing payment of the property taxes ~~which~~ THAT became a lien
20 in the year for which the credit is claimed, or ~~which~~ THAT
21 became a lien in the year ~~prior to~~ BEFORE the year for which
22 the credits claimed, is attached to the income tax or single
23 business tax return filed by the claimant. If a copy of the
24 receipt is attached to the return, the payment shall be made
25 directly to the claimant. A warrant made out to a claimant and a
26 county treasurer shall be used first to pay delinquent property
27 taxes, interest, penalties, and fees on property restricted by

1 the development rights agreement. If the warrant exceeds the
2 amount of delinquent taxes, interest, penalties, and fees, the
3 county treasurer shall remit the excess to the claimant.