SENATE BILL No. 174

March 14, 1991, Introduced by Senator N. SMITH and referred to the Committee on Agriculture and Forestry.

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:

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

Sec. 10. (1) An owner of farmland and related buildings covered by ~~a~~ 1 OR MORE development rights ~~agreement~~ AGREEMENTS meeting the requirements of this act who is required or eligible to file a return as an individual or a claimant under the state income tax act may claim a credit against the state income tax liability for the amount by which the property taxes on the land and structures used in the farming operation, including the homestead, THAT ARE restricted by ~~the~~ A development rights agreement ~~exceeds~~ EXCEED 7% of the household income as defined in chapter 9 of the state income tax act, excluding ~~any~~ A deduction if taken under section 613 of the internal revenue code OF 1986, 26 U.S.C. 613. For the purposes of this section, all of the following apply:

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

(b) A shareholder of a corporation that has filed a proper election under subchapter S of chapter 1 of subtitle A of the internal revenue code OF 1986, 26 U.S.C. 1361 TO 1379, is considered an owner of farmland and related buildings THAT ARE covered by a development rights agreement that are owned by the corporation. A shareholder shall be considered to pay a proportion of the property taxes on that property equal to the shareholder's percentage of stock ownership for the tax year as reported by the corporation to the internal revenue service. This subdivision is effective for tax years beginning after 1987.

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

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

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

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

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

(2) An owner of farmland and related buildings covered by ~~a~~ 1 OR MORE development rights ~~agreement~~ AGREEMENTS meeting the requirements of this act to whom subsection (1) does not apply may claim a credit under the single business tax act, Act No. 228 of the Public Acts of 1975, as amended, being sections 208.1 to 208.145 of the Michigan Compiled Laws, for the amount by which the property taxes on the land and structures used in farming operations THAT ARE restricted by ~~the~~ A development rights agreement ~~exceeds~~ EXCEED 7% of the adjusted business income of the owner as defined in section 36 of Act No. 228 of the Public Acts of 1975, being section 208.36 of the Michigan Compiled Laws, plus compensation to shareholders not included in adjusted business income, excluding any deductions if taken under section 613 of the internal revenue code OF 1986, 26 U.S.C. 613. When calculating adjusted business income for tax years beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the state single business

tax unless the participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who ~~have~~ executed farmland development rights agreements under ~~the~~ THIS act before January 1, 1978. A participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code OF 1986,

26 U.S.C. 151, is allowable to another owner of the property shall not be considered an owner.

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

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

(6) For purposes of audit, review, determination, appeals, hearings, notices, assessments, and administration relating to the credit program provided by this section, the state income tax act or single business tax act, Act No. 228 of the Public Acts of 1975, applies according to which tax the credit is claimed against. If an individual is allowed to claim a credit under

subsection (1) based upon property owned or held by a partnership, S corporation, or trust, the department of treasury may require that the individual furnish to the department a copy of a tax return, or portion of a tax return, and supporting schedules that the partnership, S corporation, or trust files under the internal revenue code.

(7) The department of treasury shall account separately for payments under this act and not combine them with other credit programs. A payment made to a claimant for a credit claimed under this act shall be issued by 1 or more warrants made out to the county treasurer in each county in which the claimant's property is located and the claimant unless a copy of the receipt showing payment of the property taxes ~~which~~ THAT became a lien in the year for which the credit is claimed, or ~~which~~ THAT became a lien in the year ~~prior to~~ BEFORE the year for which the ~~credits~~ CREDIT IS claimed, is attached to the income tax or single business tax return filed by the claimant. If a copy of the receipt is attached to the return, the payment shall be made directly to the claimant. A warrant made out to a claimant and a county treasurer shall be used first to pay delinquent property taxes, interest, penalties, and fees on property restricted by the development rights agreement. If the warrant exceeds the amount of delinquent taxes, interest, penalties, and fees, the county treasurer shall remit the excess to the claimant.