

SENATE BILL NO. 763

September 28, 1999, Introduced by Senators ROGERS, MC MANUS, GOUGEON, STILLE, SIKKEMA, HOFFMAN, STEIL, GAST, VAN REGENMORTER, HAMMERSTROM, JOHNSON, NORTH, BULLARD, SCHWARZ, GOSCHKA and SHUGARS and referred to the Committee on Farming, Agribusiness and Food Systems.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 36109 (MCL 324.36109), as amended by 1996
PA 233.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36109. (1) An owner of farmland and related buildings
2 covered by 1 or more development rights agreements meeting the
3 requirements of this part who is required or eligible to file a
4 return as an individual or a claimant under the state income tax
5 act may claim a credit against the state income tax liability for
6 the amount by which the property taxes on the land and structures
7 used in the farming operation, including the homestead,
8 restricted by the development rights agreements exceed ~~7%~~ 3.5%
9 of the household income as defined in chapter 9 of the state
10 income tax act, ~~being sections 206.501 to 206.532 of the~~

1 ~~Michigan Compiled Laws~~ 1967 PA 281, MCL 206.501 TO 206.532,
2 excluding a deduction if taken under section 613 of the internal
3 revenue code of 1986. ~~—, 26 U.S.C. 613.—~~ For the purposes of this
4 section, all of the following apply:

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

23 (b) A shareholder of a corporation that has filed a proper
24 election under subchapter S of chapter 1 of SUBTITLE A OF the
25 internal revenue code of 1986, 26 U.S.C. 1361 to 1379, is consid-
26 ered an owner of farmland and related buildings covered by a
27 development rights agreement that are owned by the corporation.

1 A shareholder is considered to pay a proportion of the property
2 taxes on that property equal to the shareholder's percentage of
3 stock ownership for the tax year as reported by the corporation
4 to the internal revenue service. Except as provided in
5 subsection (8), this subdivision applies to tax years beginning
6 after 1987.

7 (c) Except as otherwise provided in this subdivision, an
8 individual in possession of property for life under a life estate
9 with remainder to another person or holding property under a life
10 lease is considered the owner of that property if it is farmland
11 and related buildings covered by a development rights agreement.
12 Beginning January 1, 1986, if an individual in possession of
13 property for life under a life estate with remainder to another
14 person or holding property under a life lease enters into a writ-
15 ten agreement with the person holding the remainder interest in
16 that land and the written agreement apportions the property taxes
17 in the same manner as revenue and expenses, the life lease or
18 life estate holder and the person holding the remainder interest
19 may claim the credit under this act as it is apportioned to them
20 under the written agreement upon filing a copy of the written
21 agreement with the return.

22 (d) If a trust holds farmland and related buildings covered
23 by a development rights agreement and an individual is treated
24 under subpart E of subchapter J of SUBCHAPTER A OF chapter 1 of
25 the internal revenue code of 1986, 26 U.S.C. 671 to 679, as the
26 owner of that portion of the trust that includes the farmland and

1 related buildings, that individual is considered the owner of
2 that property.

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

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

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

15 (f) A member in a limited liability company is considered an
16 owner of farmland and related buildings covered by a development
17 rights agreement that are owned by the limited liability
18 company. A member is considered to pay a proportion of the prop-
19 erty taxes on that property equal to the member's share of owner-
20 ship or distributive share of ordinary income as reported by the
21 limited liability company to the internal revenue service.

22 (2) An owner of farmland and related buildings covered by 1
23 or more development rights agreements meeting the requirements of
24 this part to whom subsection (1) does not apply may claim a
25 credit under the single business tax act, ~~Act No. 228 of the~~
26 ~~Public Acts of 1975, being sections 208.1 to 208.145 of the~~
27 ~~Michigan Compiled Laws~~ 1975 PA 228, MCL 208.1 TO 208.145, for

1 the amount by which the property taxes on the land and structures
2 used in farming operations restricted by the development rights
3 agreements exceed 7% of the adjusted business income of the owner
4 as defined in section 36 of ~~Act No. 228 of the Public Acts of~~
5 ~~1975, being section 208.36 of the Michigan Compiled Laws~~ THE
6 SINGLE BUSINESS TAX ACT, 1975 PA 228, MCL 208.36, plus compensa-
7 tion to shareholders not included in adjusted business income,
8 excluding any deductions if taken under section 613 of the inter-
9 nal revenue code of 1986. ~~, 26 U.S.C. 613.~~ When calculating
10 adjusted business income for tax years beginning before 1987,
11 federal taxable income shall not be less than zero for the pur-
12 poses of this subsection only. A participant is not eligible to
13 claim a credit and refund against the state single business tax
14 unless the participant demonstrates that the participant's agri-
15 cultural gross receipts of the farming operation exceed 5 times
16 the property taxes on the land for each of 3 out of the 5 tax
17 years immediately preceding the year in which the credit is
18 claimed. This eligibility requirement does not apply to those
19 participants who executed farmland development rights agreements
20 under this part before January 1, 1978. A participant may com-
21 pare, during the contract period, the average of the most recent
22 3 years of agricultural gross receipts to property taxes in the
23 first year that the participant entered the program under the
24 present contract in calculating the gross receipts
25 qualification. Once an election is made by the participant to
26 compute the benefit in this manner, all future calculations shall
27 be made in the same manner.

1 (3) If the farmland and related buildings covered by a
2 development rights agreement are owned by more than 1 owner, each
3 owner is allowed to claim a credit under this section based upon
4 that owner's share of the property tax payable on the farmland
5 and related buildings. The department of treasury shall consider
6 the property tax equally apportioned among the owners unless a
7 written agreement signed by all the owners is filed with the
8 return, which agreement apportions the property taxes in the same
9 manner as all other items of revenue and expense. If the prop-
10 erty taxes are considered equally apportioned, a husband and wife
11 shall be considered 1 owner, and a person with respect to whom a
12 deduction under section 151 of the internal revenue code of 1986
13 ~~—, 26 U.S.C. 151,~~ is allowable to another owner of the property
14 shall not be considered an owner.

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

19 (5) If the allowable amount of the credit claimed exceeds
20 the state income tax or the state single business tax otherwise
21 due for the tax year or if there is no state income tax or the
22 state single business tax due for the tax year, the amount of the
23 claim not used as an offset against the state income tax or the
24 state single business tax, after examination and review, shall be
25 approved for payment to the claimant pursuant to ~~Act No. 122 of~~
26 ~~the Public Acts of 1941, being sections 205.1 to 205.31 of the~~
27 ~~Michigan Compiled Laws~~ 1941 PA 122, MCL 205.1 TO 205.31. The

1 total credit allowable under this part and chapter 9 of the state
2 income tax act or the single business tax act, ~~Act No. 228 of~~
3 ~~the Public Acts of 1975~~ 1975 PA 228, MCL 208.1 TO 208.145, shall
4 not exceed the total property tax due and payable by the claimant
5 in that year. The amount the credit exceeds the property tax due
6 and payable shall be deducted from the credit claimed under this
7 part.

8 (6) For purposes of audit, review, determination, appeals,
9 hearings, notices, assessments, and administration relating to
10 the credit program provided by this section, the state income tax
11 act or single business tax act, ~~Act No. 228 of the Public Acts~~
12 ~~of 1975~~, 1975 PA 228, MCL 208.1 TO 208.145, applies according to
13 which tax the credit is claimed against. If an individual is
14 allowed to claim a credit under subsection (1) based upon prop-
15 erty owned or held by a partnership, S corporation, or trust, the
16 department of treasury may require that the individual furnish to
17 the department a copy of a tax return, or portion of a tax
18 return, and supporting schedules that the partnership,
19 S corporation, or trust files under the internal revenue code.

20 (7) The department of treasury shall account separately for
21 payments under this part and not combine them with other credit
22 programs. A payment made to a claimant for a credit claimed
23 under this part shall be issued by 1 or more warrants made out to
24 the county treasurer in each county in which the claimant's prop-
25 erty is located and the claimant, unless the claimant specifies
26 on the return that a copy of the receipt showing payment of the
27 property taxes that became a lien in the year for which the

1 credit is claimed, or that became a lien in the year before the
2 year for which the credit is claimed, is attached to the income
3 tax or single business tax return filed by the claimant. If the
4 claimant specifies that a copy of the receipt is attached to the
5 return, the payment shall be made directly to the claimant. A
6 warrant made out to a claimant and a county treasurer shall be
7 used first to pay delinquent property taxes, interest, penalties,
8 and fees on property restricted by the development rights
9 agreement. If the warrant exceeds the amount of delinquent
10 taxes, interest, penalties, and fees, the county treasurer shall
11 remit the excess to the claimant. If a claimant falsely speci-
12 fies that the receipt showing payment of the property taxes is
13 attached to the return and if the property taxes on the land
14 subject to that development rights agreement were not paid before
15 the return was filed, all future payments to that claimant of
16 credits claimed under this act attributable to that development
17 rights agreement may be made payable to the county treasurer of
18 the county in which the property subject to the development
19 rights agreement is located and to that claimant.

20 (8) For property taxes levied after 1987, a person that was
21 an S corporation and had entered into a development rights agree-
22 ment before January 1, 1989, and paid property taxes on that
23 property, may claim the credit allowed by this section as an
24 owner eligible under subsection (2). A subchapter S corporation
25 claiming a credit as permitted by this subsection for taxes
26 levied in 1988 through 1990 shall claim the credit by filing an
27 amended return under the single business tax act, ~~Act No. 228 of~~

1 ~~the Public Acts of 1975~~ 1975 PA 228, MCL 208.1 TO 208.145. If a
2 subchapter S corporation files an amended return as permitted by
3 this subsection and if a shareholder of the subchapter S corpora-
4 tion claimed a credit under subsection (1)(b) for the same prop-
5 erty taxes, the shareholder shall file an amended return under
6 the state income tax act. A subchapter S corporation is not
7 entitled to a credit under this subsection until all of its
8 shareholders file the amended returns required by this
9 subsection. The department of treasury shall first apply a
10 credit due to a subchapter S corporation under this subsection to
11 repay credits claimed under this section by the subchapter S
12 corporation's shareholders for property taxes levied in 1988
13 through 1990 and shall refund any remaining credit to the S
14 corporation. Interest or penalty is not due or payable on an
15 income tax liability resulting from an amended return required by
16 this subsection. A subchapter S corporation electing to claim a
17 credit as an owner eligible under subsection (2) shall not claim
18 a credit under subsection (1) for property taxes levied after
19 1987.