

Legislative Analysis



ALLOW SUMMER PROPERTY TAX DEFERRALS FOR LLC-OWNED AGRICULTURAL REAL PROPERTY

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House Bill 5778 (Substitute H-1)
Sponsor: Rep. Dudley Spade
Committee: Agriculture

First Analysis (9-25-08)

BRIEF SUMMARY: The bill would amend the General Property Tax Act to allow agricultural real property owned by a limited liability corporation (LLC) to qualify for a summer property tax bill deferral until February 15 of the following year.

FISCAL IMPACT: Because the bill only delays the collection of property taxes for the affected properties, there would be no state or local revenue reduction. For local units, this could impact their cash flows. It would also delay the receipt of the 6 mill State Education Tax levy to the next state fiscal year, which would create a one-time reduction to the School Aid Fund. The number of entities that would qualify for the provision is not known, but if it is sufficiently small then the overall impact would likely be minimal.

THE APPARENT PROBLEM:

Under Section 51(2)(b)¹ of the General Property Tax Act, owners of property classified or used as agricultural real property can apply for a deferral of their summer property tax bill until the following February 15. Some say that the original rationale for providing this tax deferral for agricultural land owners was to allow crop farmers to pay their summer tax bill after the fall harvest, when they would presumably have revenue from the sale of their crops.

In recent years many farmers have chosen to incorporate as a limited liability corporation or LLC and transfer ownership of their agricultural lands to the LLC. By structuring their farm as an LLC, however, they lose their right to defer their summer tax bill. The current language of 51(2)(b), as interpreted by the Department of Treasury, does not apply to farm land owned by corporations, LLCs, or partnerships.

An LLC does not qualify for a summer tax deferral primarily because of the language of the gross receipts/household income test that a farmer must meet to qualify for a summer tax deferral. To qualify, the gross receipts of the agricultural or horticultural operations in the previous year (or average gross receipts over the past three years) must be at least

¹ A separate provision, Section 51(2)(a), allows persons who meet specified age, disability, military service, or widowhood criteria (and whose total household income is less than \$40,000) to defer summer taxes on their principal residence. The bill does not apply to principal residence deferrals under Section 51(2)(a), only to agricultural land deferrals under Section 51(2)(b). Unlike the summer tax deferrals that eligible persons can receive under Section 51(2)(a) for their principal residence, Section 51(2)(b), dealing with agricultural land, does not have a total household income cap but the gross receipts test as described in this summary).

as great as the household income of the owner in the previous year. An LLC, or any other corporation, has a principal place of business, not a household, and business income, not household income. Presumably, this gross receipts test is designed to disqualify persons who dabble in agriculture but who derive most of their income from other sources from qualifying for the summer tax deferral. As currently written, however, the deferral cannot be applied to LLCs.

The proposed legislation, as amended by the Agriculture Committee, would allow farmland owned by an LLC to qualify for a summer tax deferral if the LLC met a gross receipts test modified for LLC-owned land. As amended, agricultural land owned by an LLC would qualify for a summer tax bill deferral if the gross receipts of the agricultural operations in the previous year (or the average of the previous three years) are not less than the combined household incomes in the previous year of the individual members of the LLC.

In addition, in an attempt to ensure that the bill does not inadvertently broaden eligibility for agricultural summer tax bill deferrals beyond what the sponsor intends, the bill would only apply to agricultural land owned by an LLC "if the individual members of the limited liability company either qualified or would have qualified for the deferment under this section before the individual members formed the limited liability company."

THE CONTENT OF THE BILL:

House Bill 5778 would amend the General Property Tax Act (MCL 211.51) specifically to allow agricultural property owned by a limited liability corporation to qualify for a summer property tax bill deferral, allowing the LLC to delay paying its summer tax bill until the following February 15. (The bill does not address agricultural property owned by partnerships or other types of corporations that are not LLCs.)

Under Section 51(2)(b) of the General Property Tax Act, a local tax collecting unit that collects a summer property tax must allow owners of property classified or used as agricultural real property to file for summer tax deferrals, if they meet a gross receipts test. The current test is that the gross receipts of the agricultural or horticultural operation for the previous year (or the average of the past three years) must be at least as great or greater than the total household income of the owner in the previous year.

As amended, the bill would allow agricultural land owned by an LLC to qualify for a summer tax deferral if the LLC met a gross receipts test modified for LLC-owned land. As amended, agricultural land owned by an LLC would qualify for a summer tax bill deferral if the gross receipts of the agricultural operations in the previous year (or the average of the previous three years) are not less than the combined household incomes in the previous year of the individual members of the LLC.

The bill was also amended to apply only to agricultural land owned by an LLC "if the individual members of the limited liability company either qualified or would have

qualified for the deferment under this section before the individual members formed the limited liability company."

BACKGROUND INFORMATION:

The Department of Treasury's Frequently Asked Questions about summer tax deferral indicates that agricultural property owned by partnerships, limited liability corporations (LLCs), and other corporations does not qualify for the summer tax deferral under either of two different categories described above:

Can a corporation, LLC, or partnership defer summer taxes?

No. A corporation, LLC, or partnership does not satisfy the deferment requirements of the General Property Tax Act (MCL 211.51) with respect to homestead property (i.e., an owner must also be a totally and permanently disabled, blind, paraplegic, quadriplegic, an eligible serviceperson, eligible veteran, or eligible widow or widower, or who is at least 62 years of age), nor the household gross income requirement of \$40,000 or less. A corporation also would not meet the following requirement for agricultural property for deferment, as this is based on the household income of the owner and not the income or profits of a corporation: " . . . if the gross receipts of the agricultural or horticultural operations in the previous year or the average gross receipts of the operations in the previous 3 years are not less than the household income of the owner in the previous year."

ARGUMENTS:

For:

Farmers who form a limited liability corporation for tax, liability, or other purposes should not thereby lose their right to defer the summer tax bill on their agricultural lands. They should not be penalized for the form of ownership structure they adopt.

Against:

In the same vein, why should farmers who adopt a different business structure (such as a Subchapter S corporation or a partnership) not also have the right to defer their summer taxes? Why does the bill favor only LLC-owned farms?

Likewise, why is the tax deferral only available to farmers who would have qualified for one before forming an LLC? Why should a person who forms an LLC before purchasing agricultural land not also be eligible?

On the other hand, why would farmers who are not crop farmers who receive the bulk of their revenue after the fall harvest be eligible for deferrals in the first place? For instance, why should dairy farmers or others whose income is not heavily dependent on revenue from a fall harvest be eligible at all?

POSITIONS:

The Department of Treasury supports the bill as amended. (9-25-08)

The Michigan Farm Bureau supports the bill as introduced but needs to review the committee amendments before taking a position on them. (9-25-08)

The Michigan Townships Association is neutral on the bill, but supports the general direction of the committee amendments. (9-25-08)

The Sierra Club supports the intent of the bill, but seeks additional amendments to limit the size of agricultural operations that would be eligible for the deferment and to require compliance with state environmental laws as a criterion for eligibility. (9-25-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.