



HOUSE BILL No. 5184

October 3, 1995, Introduced by Reps. Bullard, Perricone, Jamian, Jersevic, Jaye, Dolan, Kukuk, Walberg and Galloway and referred to the Committee on Tax Policy.

A bill to amend sections 36102 and 36109 of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," as added by Act No. 59 of the Public Acts of 1995, being sections 324.36102 and 324.36109 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 36102 and 36109 of Act No. 451 of the
2 Public Acts of 1994, as added by Act No. 59 of the Public Acts of
3 1995, being sections 324.36102 and 324.36109 of the Michigan
4 Compiled Laws, are amended to read as follows:

5 Sec. 36102. (1) The state land use agency may execute a
6 development rights agreement or easement on behalf of the state.

7 (2) The provisions of a development rights agreement or
8 easement shall be consistent with the purposes of this part and

1 shall not permit an action which will materially impair the
2 character of the land involved.

3 (3) BEGINNING ON JANUARY 1, 1996, THE STATE LAND USE AGENCY
4 SHALL NOT ENTER INTO, EXECUTE, OR RENEW A DEVELOPMENT RIGHTS
5 AGREEMENT OR EASEMENT UNDER THIS ACT UNLESS THAT AGREEMENT PRO-
6 VIDES IN WRITING THAT THE OWNER IS NOT ELIGIBLE FOR A TAX CREDIT
7 UNDER SECTION 36109.

8 Sec. 36109. (1) ~~An~~ EXCEPT AS PROVIDED IN SUBSECTION (9),
9 AN owner of farmland and related buildings covered by 1 or more
10 development rights agreements meeting the requirements of this
11 part who is required or eligible to file a return as an individ-
12 ual or a claimant under the state income tax act may claim a
13 credit against the state income tax liability for the amount by
14 which the property taxes on the land and structures used in the
15 farming operation, including the homestead, restricted by the
16 development rights agreements exceed 7% of the household income
17 as defined in chapter 9 of the state income tax act, being sec-
18 tions 206.501 to 206.532 of the Michigan Compiled Laws, excluding
19 a deduction if taken under section 613 of the internal revenue
20 code of 1986, 26 U.S.C. 613. For the purposes of this section,
21 all of the following apply:

22 (a) A partner in a partnership is considered an owner of
23 farmland and related buildings covered by a development rights
24 agreement that are owned by the partnership. A partner is con-
25 sidered to pay a proportion of the property taxes on that prop-
26 erty equal to the partner's share of ownership of capital or
27 distributive share of ordinary income as reported by the

1 partnership to the internal revenue service or, if the
2 partnership is not required to report that information to the
3 internal revenue service, as provided in the partnership agree-
4 ment or, if there is no written partnership agreement, a state-
5 ment signed by all the partners. A partner claiming a credit
6 under this section based upon the partnership agreement or a
7 statement shall file a copy of the agreement or statement with
8 his or her income tax return. If the agreement or statement is
9 not filed, the department of treasury shall deny the credit. All
10 partners in a partnership claiming the credit allowed under this
11 section shall compute the credit using the same basis for the
12 apportionment of the property taxes.

13 (b) A shareholder of a corporation that has filed a proper
14 election under subchapter S of chapter 1 of the internal revenue
15 code of 1986, 26 U.S.C. 1361 to 1379, is considered an owner of
16 farmland and related buildings covered by a development rights
17 agreement that are owned by the corporation. A shareholder is
18 considered to pay a proportion of the property taxes on that
19 property equal to the shareholder's percentage of stock ownership
20 for the tax year as reported by the corporation to the internal
21 revenue service. Except as provided in subsection (8), this sub-
22 division applies to tax years beginning after 1987.

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

1 (d) If a trust holds farmland and related buildings covered
2 by a development rights agreement and an individual is treated
3 under subpart E of subchapter J of chapter 1 of the internal rev-
4 enue code of 1986, 26 U.S.C. 671 to 679, as the owner of that
5 portion of the trust that includes the farmland and related
6 buildings, that individual is considered the owner of that
7 property.

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

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

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

20 (2) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (9), AN
21 owner of farmland and related buildings covered by 1 or more
22 development rights agreements meeting the requirements of this
23 part to whom subsection (1) does not apply may claim a credit
24 under the single business tax act, Act No. 228 of the Public Acts
25 of 1975, being sections 208.1 to 208.145 of the Michigan Compiled
26 Laws, for the amount by which the property taxes on the land and
27 structures used in farming operations restricted by the

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

25 (3) If the farmland and related buildings covered by a
26 development rights agreement are owned by more than 1 owner, each
27 owner is allowed to claim a credit under this section based upon

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

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

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

1 claimant in that year. The amount the credit exceeds the
2 property tax due and payable shall be deducted from the credit
3 claimed under this part.

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

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

1 warrant made out to a claimant and a county treasurer shall be
2 used first to pay delinquent property taxes, interest, penalties,
3 and fees on property restricted by the development rights
4 agreement. If the warrant exceeds the amount of delinquent
5 taxes, interest, penalties, and fees, the county treasurer shall
6 remit the excess to the claimant.

7 (8) For property taxes levied after 1987, a person that was
8 an S corporation and had entered into a development rights agree-
9 ment before January 1, 1989, and paid property taxes on that
10 property, may claim the credit allowed by this section as an
11 owner eligible under subsection (2). A subchapter S corporation
12 claiming a credit as permitted by this subsection for taxes
13 levied in 1988 through 1990 shall claim the credit by filing an
14 amended return under the single business tax act, Act No. 228 of
15 the Public Acts of 1975. If a subchapter S corporation files an
16 amended return as permitted by this subsection and if a share-
17 holder of the subchapter S corporation claimed a credit under
18 subsection (1)(b) for the same property taxes, the shareholder
19 shall file an amended return under the state income tax act. A
20 subchapter S corporation is not entitled to a credit under this
21 subsection until all of its shareholders file the amended returns
22 required by this subsection. The department of treasury shall
23 first apply a credit due to a subchapter S corporation under this
24 subsection to repay credits claimed under this section by the
25 subchapter S corporation's shareholders for property taxes levied
26 in 1988 through 1990 and shall refund any remaining credit to the
27 S corporation. Interest or penalty is not due or payable on an

1 income tax liability resulting from an amended return required by
2 this subsection. A subchapter S corporation electing to claim a
3 credit as an owner eligible under subsection (2) shall not claim
4 a credit under subsection (1) for property taxes levied after
5 1987.

6 (9) A DEVELOPMENT RIGHTS AGREEMENT OR EASEMENT ENTERED INTO,
7 EXECUTED, OR RENEWED AFTER DECEMBER 31, 1995 IS NOT ELIGIBLE FOR
8 A TAX CREDIT UNDER THIS SECTION.

9 Section 2. This amendatory act shall take effect January 1,
10 1996.

11 Section 3. This amendatory act shall not take effect unless
12 all of the following bills of the 88th Legislature are enacted
13 into law:

14 (a) Senate Bill No. ___ or House Bill No. 5181 (request
15 no. 05372'95).

16 (b) Senate Bill No. ___ or House Bill No. 5182 (request
17 no. 06142'95).

18 (c) Senate Bill No. ___ or House Bill No. 5183 (request
19 no. 06143'95).

20 (d) Senate Bill No. ___ or House Bill No. 5180 (request
21 no. 06144'95).