SFA BILL ANALYSIS
Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 770 (as reported with amendment)
Sponsor: Senator Norman D. Shinkle
Committee: Finance

Date Completed: 2-6-90

RATIONALE

Currently, under the Farmland and Open Space Preservation Act, a farmer can enter into a contract with the State (a development rights agreement) that grants a special property tax credit in return for a promise to keep farmland in agricultural use. The credit can be claimed under the Income Tax Act or the Single Business Tax (SBT) Act depending upon the taxpayer's filing status. In the case of an S-corporation, the individual shareholders file for the credit as individuals on the income tax return; in the case of a regular corporation, the corporation itself files for the credit against the SBT. (An S-corporation, as defined in the Internal Revenue Code, is a small business corporation that has 35 or fewer shareholders, has no nonresident aliens as shareholders, does not have more than one class of stock, and fulfills other requirements of the Code.)

Prior to 1988 amendments, the Farmland and Open Space Preservation Act provided that only persons eligible to file individual income tax returns could claim the credit against the income tax (individuals and couples), while others such as partners, shareholders in S-corporations, and corporations had to file for the credit against the SBT. Public Act 423 of 1988 amended the Act in numerous ways. One amendment required that partners in partnerships and shareholders in S-corporations file for the credit under the Income Tax Act. It was argued that the change would be beneficial to partners and S-corporation shareholders because it was harder to qualify for the credit under the SBT Act than under the Income Tax Act. While this may have been true for some, several S-corporation shareholders have claimed that the opposite is true--that they qualified for the credit under the SBT Act but now don't qualify under the Income Tax Act. Testimony before the Senate Finance Committee indicated that for this reason many farming S-corporations changed their business structure to regular corporate status so they could claim the credit under the SBT.

Few S-corporation farms remain. Testimony revealed that of the approximately 18,000 farms with development rights agreements, only 64 are S-corporations. It has been suggested that those S-corporation farms that didn't have a chance to change their corporate structure before the 1988 amendments took effect should be allowed to file for the credit under the SBT Act for the two tax years since the change, as an alternative to their shareholders claiming the credit against the income tax.

CONTENT

The bill would amend the Farmland and Open Space Preservation Act to allow a taxpayer that was an S-corporation in 1988 or 1989 to claim the credit allowed by the Act (the farmland preservation credit) under either the Income Tax Act or the Single Business Tax Act. The bill would allow a taxpayer to file an amended return for tax years 1988 or 1989 to claim any refund due. If a taxpayer elected to file an amended return, each shareholder of the S-corporation would have to file an amended return with the tax due as a result of not claiming the credit individually; however, if the taxpayer were due a net refund as a result of the amended return, the taxpayer could file the amended return without remitting the tax that was due.

MCL 554.710

FISCAL IMPACT

The bill would lead to a small, indeterminate reduction in GF/GP revenues. Fewer than 100 farmers would be eligible for refiling under the bill.

ARGUMENTS

Supporting Argument

Prior to the passage of Public Act 423 of 1988, S-corporation shareholders eligible for the farmland preservation credit had to file for the credit under the SBT Act. Public Act 423 changed that tax requirement to say that such shareholders had to file for the credit under the Income Tax Act. While this change may have been beneficial to some, depending upon the individual nature of their tax returns, others found that the opposite was true: where once they had qualified under the SBT Act, now they no longer qualified under the Income Tax Act. Reportedly, many S-corporation farms changed their business structure to regular corporate status rather than remain S-corporations. The bill would allow a choice between S-corporation farms filing for the credit under the SBT Act for the 1988 and 1989 tax years only, or their shareholders claiming the credit against the income tax. This would give those taxpayers who were harmed by the 1988 tax change an opportunity to recover the credit, and allow others who may be harmed in tax year 1990 and beyond an opportunity to change their corporate status.

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