

HOUSE BILL NO. 4765

June 15, 2023, Introduced by Reps. Puri and Morgan and referred to the Committee on Government Operations.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 36109 (MCL 324.36109), as amended by 2016 PA 265.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36109. (1) An owner of farmland and related buildings
2 subject to 1 or more development rights agreements under section
3 36104 or agricultural conservation easements or purchases of
4 development rights under section 36111b or 36206 who is required or

1 eligible to file a return as an individual or a claimant under the
 2 state income tax act may claim a credit against state income tax
 3 liability for the amount by which the property taxes on the land
 4 and structures used in the farming operation, including the
 5 homestead, restricted by the development rights agreements,
 6 agricultural conservation easements, or purchases of development
 7 rights exceed 3.5% of the **total household ~~income~~ resources** as **that**
 8 **term is** defined in section 508 of the ~~income tax act of 1967, 1967~~
 9 ~~PA 281, state income tax act~~, MCL 206.508, excluding a deduction if
 10 taken under section 613 of the internal revenue code of 1986, 26
 11 USC 613. For the purposes of this section, all of the following
 12 apply:

13 (a) A partner in a partnership is considered an owner of
 14 farmland and related buildings owned by the partnership and covered
 15 by a development rights agreement, agricultural conservation
 16 easement, or purchase of development rights. A partner is
 17 considered to pay a proportion of the property taxes on that
 18 property equal to the partner's share of ownership of capital or
 19 distributive share of ordinary income as reported by the
 20 partnership to the Internal Revenue Service or, if the partnership
 21 is not required to report that information to the Internal Revenue
 22 Service, as provided in the partnership agreement or, if there is
 23 no written partnership agreement, a statement signed by all the
 24 partners. A partner claiming a credit under this section based ~~upon~~
 25 **on** the partnership agreement or a statement shall file a copy of
 26 the agreement or statement with ~~his or her~~ **the partner's** income tax
 27 return. If the agreement or statement is not filed, the department
 28 of treasury shall deny the credit. All partners in a partnership
 29 claiming the credit allowed under this section shall compute the

1 credit using the same basis for the apportionment of the property
2 taxes.

3 (b) A shareholder of a corporation that has filed a proper
4 election under subchapter S of chapter 1 of subtitle A of the
5 internal revenue code of 1986, 26 USC 1361 to 1379, is considered
6 an owner of farmland and related buildings covered by a development
7 rights agreement that are owned by the corporation. A shareholder
8 is considered to pay a proportion of the property taxes on that
9 property equal to the shareholder's percentage of stock ownership
10 for the tax year as reported by the corporation to the Internal
11 Revenue Service. Except as provided in subsection (8), this
12 subdivision applies to tax years beginning after 1987.

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

28 (d) If a trust holds farmland and related buildings covered by
29 a development rights agreement and an individual is treated under

1 subpart E of subchapter J of ~~subchapter~~ **chapter 1 of subtitle A** of
2 ~~chapter 1~~ of the internal revenue code of 1986, 26 USC 671 to 679,
3 as the owner of that portion of the trust that includes the
4 farmland and related buildings, that individual is considered the
5 owner of that property.

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

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

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

18 (f) A member in a limited liability company is considered an
19 owner of farmland and related buildings covered by a development
20 rights agreement that are owned by the limited liability company. A
21 member is considered to pay a proportion of the property taxes on
22 that property equal to the member's share of ownership or
23 distributive share of ordinary income as reported by the limited
24 liability company to the Internal Revenue Service.

25 (2) An owner of farmland and related buildings subject to 1 or
26 more development rights agreements under section 36104 or
27 agricultural conservation easements or purchases of development
28 rights under section 36111b or 36206 to whom subsection (1) does
29 not apply may claim a credit under the former single business tax

1 act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL
2 208.1101 to 208.1601, for the amount by which the property taxes on
3 the land and structures used in farming operations restricted by
4 the development rights agreements, agricultural conservation
5 easements, or purchases of development rights exceed 3.5% of the
6 adjusted business income of the owner as defined in section 36 of
7 the former single business tax act, 1975 PA 228, or the business
8 income tax base of the owner as ~~defined in~~ **described under** section
9 201 of the Michigan business tax act, 2007 PA 36, MCL 208.1201,
10 plus compensation to shareholders not included in adjusted business
11 income or the business income tax base, excluding any deductions if
12 taken under section 613 of the internal revenue code of 1986, 26
13 USC 613. When calculating adjusted business income for tax years
14 beginning before 1987, federal taxable income ~~shall~~ **must** not be
15 less than zero for the purposes of this subsection only. A
16 participant is not eligible to claim a credit and refund against
17 the former single business tax act, 1975 PA 228, or the Michigan
18 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the
19 participant demonstrates that the participant's agricultural gross
20 receipts of the farming operation exceed 5 times the property taxes
21 on the land for each of 3 out of the 5 tax years immediately
22 preceding the year in which the credit is claimed. This eligibility
23 requirement does not apply to those participants who executed
24 farmland development rights agreements under this part before
25 January 1, 1978. A participant may compare, during the contract
26 period, the average of the most recent 3 years of agricultural
27 gross receipts to property taxes in the first year that the
28 participant entered the program under the present contract in
29 calculating the gross receipts qualification. Once an election is

1 made by the participant to compute the benefit in this manner, all
2 future calculations ~~shall~~**must** be made in the same manner.

3 (3) If the farmland and related buildings covered by a
4 development rights agreement under section 36104 or an agricultural
5 conservation easement or purchase of development rights under
6 section 36111b or 36206 are owned by more than 1 owner, each owner
7 is allowed to claim a credit under this section based ~~upon~~**on** that
8 owner's share of the property tax payable on the farmland and
9 related buildings. The department of treasury shall consider the
10 property tax equally apportioned among the owners unless a written
11 agreement signed by all the owners is filed with the return, which
12 agreement apportions the property taxes in the same manner as all
13 other items of revenue and expense. If the property taxes are
14 considered equally apportioned, ~~a husband and wife shall be~~**spouses**
15 **are** considered 1 owner, and a person with respect to whom a
16 deduction under section 151 of the internal revenue code of 1986,
17 26 USC 151, is allowable to another owner of the property ~~shall~~**is**
18 not ~~be~~ considered an owner.

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

23 (5) If the allowable amount of the credit claimed exceeds the
24 state income tax or the state business tax otherwise due for the
25 tax year or if there is no state income tax or the state business
26 tax due for the tax year, the amount of the claim not used as an
27 offset against the state income tax or the state business tax,
28 after examination and review, ~~shall~~**must** be approved for payment to
29 the claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The

1 total credit allowable under this part and chapter 9 of the ~~income~~
2 ~~tax act of 1967, 1967 PA 281, state income tax act~~, MCL 206.501 to
3 206.532, or the former single business tax act, 1975 PA 228, or the
4 Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601,
5 ~~shall-must~~ not exceed the total property tax due and payable by the
6 claimant in that year. The amount the credit exceeds the property
7 tax due and payable ~~shall-must~~ be deducted from the credit claimed
8 under this part.

9 (6) For purposes of audit, review, determination, appeals,
10 hearings, notices, assessments, and administration relating to the
11 credit program provided by this section, the state income tax act,
12 the former single business tax act, 1975 PA 228, or the Michigan
13 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, applies
14 according to which tax the credit is claimed against. If an
15 individual is allowed to claim a credit under subsection (1) based
16 ~~upon-on~~ property owned or held by a partnership, S corporation, or
17 trust, the department of treasury may require that the individual
18 furnish it with a copy of a tax return, or portion of a tax return,
19 and supporting schedules that the partnership, S corporation, or
20 trust files under the internal revenue code.

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

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

19 (8) For property taxes levied after 1987, a person that was an
20 S corporation and had entered into a development rights agreement
21 before January 1, 1989, and paid property taxes on that property,
22 may claim the credit allowed by this section as an owner eligible
23 under subsection (2). A subchapter S corporation claiming a credit
24 as permitted by this subsection for taxes levied in 1988 through
25 1990 shall claim the credit by filing an amended return under the
26 former single business tax act, 1975 PA 228. If a subchapter S
27 corporation files an amended return as permitted by this subsection
28 and if a shareholder of the subchapter S corporation claimed a
29 credit under subsection (1) (b) for the same property taxes, the

1 shareholder shall file an amended return under the state income tax
2 act. A subchapter S corporation is not entitled to a credit under
3 this subsection until all of its shareholders file the amended
4 returns required by this subsection. The department of treasury
5 shall first apply a credit due to a subchapter S corporation under
6 this subsection to repay credits claimed under this section by the
7 subchapter S corporation's shareholders for property taxes levied
8 in 1988 through 1990 and shall refund any remaining credit to the S
9 corporation. Interest or penalty is not due or payable on an income
10 tax liability resulting from an amended return required by this
11 subsection. A subchapter S corporation electing to claim a credit
12 as an owner eligible under subsection (2) shall not claim a credit
13 under subsection (1) for property taxes levied after 1987.

14 Enacting section 1. This amendatory act does not take effect
15 unless Senate Joint Resolution _____ or House Joint Resolution F
16 (request no. 00367'23) of the 102nd Legislature becomes a part of
17 the state constitution of 1963 as provided in section 1 of article
18 XII of the state constitution of 1963.