

# Taking Advantage of Existing Tax Relief for Qualified Agricultural Property

by Gregory J. Gamalski and  
John P. McNew

As the price of agricultural land soars in Michigan, it pays, or at least saves, to review the qualified agricultural property exemption. According to a recent report, state assessment records show that the value of agricultural land has risen 11 percent since 2008, making it the only class of real estate in Michigan to grow beyond pre-recession values.<sup>1</sup> A confluence of market conditions including a jump in commodity prices and an increase in wind energy development have been attributed to the rise in agricultural land values since 2008. As the land has increased in profitability, farmers have been rapidly acquiring more, pushing up the per-acre cost considerably. As agricultural land changes hands for elevated prices, real property tax relief and transfer exemptions under the General Property Tax Act, MCL 211.1 *et seq.*, and the Farmland and Open Space Preservation Act, MCL 324.36101 *et seq.*, offer buyers potentially significant property tax savings.

## General Property Tax Act Exemptions

Under General Property Tax Act Section 211.7ee, agricultural land is entitled to the qualified agricultural property exemption. The qualified agricultural property exemption exempts certain defined property from the state's 18-mill school operating millage. As an example, Holly Township in Oakland County levies a total of about 56 mills including the state school operating millage. On a property with a taxable value of \$200,000.00 the property tax bill is about \$11,200.00. But if the qualified agricultural exemption is used, the real property taxes are reduced by 32 percent, to about \$7,600.00.

Additionally, the sale of qualified agricultural property is not a transfer of ownership or an uncapping event that reassesses the property. In most other instances when real

property in Michigan is sold, the sale triggers a so-called uncapping event and the taxable value, which is usu

ally lower than the state equalized value (SEV), rises to the SEV thus increasing total property taxes. Transfers of qualified agricultural properties do not uncapping provided that: 1) the property remains qualified agricultural property after the transfer, and 2) the person to whom the property is transferred files an affidavit with the assessor and the register of deeds. The state provides Form 3676 as a standardized affidavit that is available on the State Tax Commission website.<sup>2</sup>

Even in the event a purchaser of qualified agricultural property does not timely file an affidavit to claim the exemption from uncapping and the value of the property uncaps, there may still be retroactive relief. The property is eligible for recapping of the taxable value when all of the following five conditions are met: 1) a purchaser of qualified agricultural property qualifies for the exemption from uncapping except that the purchaser does not timely file the affidavit required, 2) the assessor uncaps the taxable value in the year following the transfer, 3) The purchaser later discovers (or chooses to claim) this exemption from uncapping, 4) the purchaser then files the affidavit (Form 3676), and 5) the property was qualified agricultural property for each year back to and including 1999. When all five of these conditions exist, the local tax collection unit must immediately revise the current tax roll to reflect the capped value. While the owner of the recapped property is not entitled to a refund of taxes already paid, if the recapping occurs before the due date of the current tax bill, the recapped value will be used for the current tax period.

### *Qualified Agricultural Property*

A parcel can become qualified agricultural property in two ways: 1) the parcel is classified as agricultural on the assessment roll, or 2) the property is not classified as agricultural, but, nonetheless, greater than 50 percent of its acreage is devoted to agricultural uses. The definition allows for some interesting scenarios. For example, a property that is classified or zoned as residential will nevertheless be eligible for the exemption if more than 50 percent of the acreage is used for agricultural purposes. On the other hand, if a property is zoned as agricultural, the owner may qualify for the exemption even if none of the property is used for agricultural purposes.

Owners of parcels that are not classified by the assessor as agricultural must file an affidavit with the local assessor claiming the exemption. The state provides Form 2599 as a standardized affidavit that is available on the State Tax Commission website.<sup>3</sup> In order for the parcel to be considered by the assessor for the exemption, the affidavit must be filed by the status day (May 1) for the year in which the exemption is being requested. When determining a parcel's eligibility for status as qualified agricultural property, an assessor considers all of the relevant facts for the parcel as of May 1 for the year in which the exemption is sought. Even if the land is not being actively farmed, the property may still qualify; for example, the land may be intention-

ally left fallow or the growing season for a particular crop may not have begun.

When making the determination, the assessor basis for calculating the percentage of the parcel devoted to agriculture is the parcel's total acreage, not the parcel's tillable acreage. The exemption can also apply to an improved parcel. Property qualifying for the qualified agricultural exemption may include related buildings. Related buildings are structures on a parcel that are in some way part of the agricultural process, including barns and poultry houses. Related buildings are also defined to include a residence occupied by a person employed in or actively involved in the parcel's agricultural use and who has not claimed the homeowner's principal residence exemption on another piece of property. However, any part of a property that is devoted to commercial or industrial use, no matter how small, is not entitled to the exemption. For instance, if a parcel of land that would otherwise be classified qualified agricultural land contains a cell phone tower or a commercial marketing operation for the farm, that portion of the parcel occupied by the commercial or industrial use does not qualify for the exemption. In such a case, the parcel would receive a partial qualified agricultural property exemption. It is also of note that if the property otherwise qualifies for the exemption, unlike the homeowner's principal residence exemption, the property may be owned by a partnership, corporation, limited liability company or other legal entity.

### **Farmland and Open Space Preservation Tax Credit**

Aside from the exemption from the 18-mill state education millage, the owner of property enrolled in the Farmland and Open Space Preservation tax credit program can receive a credit against state income taxes. Under this system, the owner is entitled to a tax credit equal to the amount of property tax in excess of 3.5 percent of the owner's income. The Michigan Department of Agriculture gives the following example: "[I]f the owner has an income of \$20,000 and property taxes on the farm total \$2,000, he/she would subtract \$700 (3.5 percent of \$20,000) from the \$2,000 property tax for an income tax credit of \$1,300."

There are further benefits under the Farmland and Open Space Preservation Act credit program. Property enrolled in this program is also exempt from future (not current) special assessments for water, sewer and some drainage projects, though road improvement levies still apply. While the exemption from special assessments is subject to recapture if the property is sold (or the farmland/open space preservation contract is released prior to the expiration date of the agreement), the amount of the recapture cannot exceed the amount the assessment would have been at the time of the exemption and does not include any interest or penalty. Also, if the land is sold and the agricultural usage terminates (e.g., the property is developed), then there is a recapture of part of the actual income tax credit (usually the past seven years' credits).

### **Conclusion**

In any of these instances there are a number of fact-specific scenarios that require deeper analysis that is well beyond the scope of the above discussion. Additionally, there are other rules that can exempt certain timberland from the 18-mill state school operating millage under Michigan's Qualified Forest Program. Finally, keep in mind that these exemption and credit programs are not like conservation easement donations under federal income tax laws, and are not subject to deductions from income for federal income tax purposes.

For these and other reasons, we recommend the services of an attorney, especially if you are negotiating the purchase or sale of agricultural land, considering enrolling land in one of the programs, or planning to claim one of these exemptions.



*Gregory J. Gamalski is a member of Bodman PLC in Troy and a member of the firm's Real Estate Practice Group. He concentrates his practice in the area of real estate law, working with real estate owners and investors, and especially with residential builders and developers, on condominium and land development matters. Mr. Gamalski is a past president of the University of Detroit-Mercy Law Alumni Board, an associate member of the Michigan Society of Professional Surveyors, a member of the State Bar of Michigan Real Property Law Section's governing council, past chair of the section's Continuing Legal Education Committee and past chair of the section's Condominium Cooperatives and Planned Unit Developments Committee.*



*John P. McNew is an associate at McDonald Hopkins LLC and a member of the firm's Business Department. John concentrates his practice on corporate law, commercial transactions, mergers and acquisitions, real estate transactions, business formation, information and technology transactions, and digital media issues. John's clients include startups and small- and middle-market businesses.*

### **Footnotes**

- 1 <http://www.bridgemi.com/economy/farmland-prices-soar-michigan>.
- 2 [https://www.michigan.gov/documents/3676f\\_2690\\_7.pdf](https://www.michigan.gov/documents/3676f_2690_7.pdf).
- 3 [https://www.michigan.gov/documents/2599f\\_2606\\_7.pdf](https://www.michigan.gov/documents/2599f_2606_7.pdf).