

SUBSTITUTE FOR
HOUSE BILL NO. 4734

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending section 38g (MCL 208.38g), as amended by 2003 PA 249.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 38g. (1) Subject to the criteria under this section, an
2 eligible taxpayer may claim a credit against the tax imposed by
3 this act as determined under subsections (20) to (25); and subject
4 to the criteria under this section, a qualified taxpayer that has a
5 preapproval letter issued after December 31, 1999 and before
6 January 1, 2008, provided that the project is completed not more
7 than 5 years after the preapproval letter for the project is
8 issued, or an assignee under subsection (17), ~~or~~ (18), **OR (34)**
9 may claim a credit that has been approved under subsection (2), ~~or~~
10 (3), **OR (33)** against the tax imposed by this act equal to either of
11 the following:

1 (a) If the total of all credits for a project is \$1,000,000.00
2 or less, 10% of the cost of the qualified taxpayer's eligible
3 investment paid or accrued by the qualified taxpayer on an eligible
4 property provided that the project does not exceed the amount
5 stated in the preapproval letter. If eligible investment exceeds
6 the amount of eligible investment in the preapproval letter for
7 that project, the total of all credits for the project shall not
8 exceed the total of all credits on the certificate of completion.

9 (b) If the total of all credits for a project is more than
10 \$1,000,000.00 but \$30,000,000.00 or less and, except as provided in
11 subsection (5)(b), the project is located in a qualified local
12 governmental unit, a percentage as determined by the Michigan
13 economic growth authority not to exceed 10% of the cost of the
14 qualified taxpayer's eligible investment as determined under
15 subsection (8) paid or accrued by the qualified taxpayer on an
16 eligible property. If eligible investment exceeds the amount of
17 eligible investment in the preapproval letter for that project, the
18 total of all credits for the project shall not exceed the total of
19 all credits on the certificate of completion.

20 (2) If the cost of a project will be for **MORE THAN**
21 **\$2,000,000.00 BUT** \$10,000,000.00 or less, a qualified taxpayer
22 shall apply to the Michigan economic growth authority for approval
23 of the project under this subsection. An application under this
24 subsection shall state whether the project is a multiphase project.
25 The chairperson of the Michigan economic growth authority or his or
26 her designee is authorized to approve an application or project
27 under this subsection. Only the chairperson of the Michigan

1 economic growth authority is authorized to deny an application or
2 project under this subsection. A project shall be approved or
3 denied not more than 45 days after receipt of the application. If
4 the chairperson of the Michigan economic growth authority or his or
5 her designee does not approve or deny an application within 45 days
6 after the application is received by the Michigan economic growth
7 authority, the application is considered approved as written. The
8 total of all credits for all projects approved under this
9 subsection shall not exceed \$30,000,000.00 **PLUS ANY AMOUNT**
10 **AVAILABLE PURSUANT TO SUBSECTION (33)** in any calendar year. The
11 criteria in subsection (6) shall be used when approving projects
12 under this subsection. When approving projects under this
13 subsection, priority shall be given to projects on a facility. The
14 total of all credits for an approved project under this subsection
15 shall not exceed \$1,000,000.00. A taxpayer may apply under this
16 subsection instead of subsection (3) for approval of a project that
17 will be for more than \$10,000,000.00 but the total of all credits
18 for that project shall not exceed \$1,000,000.00. If the chairperson
19 of the Michigan economic growth authority or his or her designee
20 approves a project under this subsection, the chairperson of the
21 Michigan economic growth authority or his or her designee shall
22 issue a preapproval letter that states that the taxpayer is a
23 qualified taxpayer; the maximum total eligible investment for the
24 project on which credits may be claimed and the maximum total of
25 all credits for the project when the project is completed and a
26 certificate of completion is issued; and the project number
27 assigned by the Michigan economic growth authority. If a project is

1 denied under this subsection, a taxpayer is not prohibited from
2 subsequently applying under this subsection or subsection (3) for
3 the same project or for another project.

4 (3) If the cost of a project will be for more than
5 \$10,000,000.00 and, except as provided in subsection (5)(b), the
6 project is located in a qualified local governmental unit, a
7 qualified taxpayer shall apply to the Michigan economic growth
8 authority for approval of the project. The Michigan economic growth
9 authority shall approve or deny the project not more than 65 days
10 after receipt of the application. A project under this subsection
11 shall not be approved without the concurrence of the state
12 treasurer. If the Michigan economic growth authority does not
13 approve or deny the application within 65 days after it receives
14 the application, the Michigan economic growth authority shall send
15 the application to the state treasurer. The state treasurer shall
16 approve or deny the application within 5 days after receipt of the
17 application. If the state treasurer does not deny the application
18 within the 5 days after receipt of the application, the application
19 is considered approved. The Michigan economic growth authority
20 shall approve a limited number of projects under this subsection
21 during each calendar year as provided in subsection (5). The
22 Michigan economic growth authority shall use the criteria in
23 subsection (6) when approving projects under this subsection, when
24 determining the total amount of eligible investment, and when
25 determining the percentage of eligible investment for the project
26 to be used to calculate a credit. The total of all credits for an
27 approved project under this subsection shall not exceed the amount

1 designated in the preapproval letter for that project. If the
2 Michigan economic growth authority approves a project under this
3 subsection, the Michigan economic growth authority shall issue a
4 preapproval letter that states that the taxpayer is a qualified
5 taxpayer; the percentage of eligible investment for the project
6 determined by the Michigan economic growth authority for purposes
7 of subsection (1)(b); the maximum total eligible investment for the
8 project on which credits may be claimed and the maximum total of
9 all credits for the project when the project is completed and a
10 certificate of completion is issued; and the project number
11 assigned by the Michigan economic growth authority. The Michigan
12 economic growth authority shall send a copy of the preapproval
13 letter to the department. If a project is denied under this
14 subsection, a taxpayer is not prohibited from subsequently applying
15 under this subsection or subsection (2) for the same project or for
16 another project.

17 (4) If the project is on property that is functionally
18 obsolete, the taxpayer shall include, with the application, an
19 affidavit signed by a level 3 or level 4 assessor, that states that
20 it is the assessor's expert opinion that the property is
21 functionally obsolete and the underlying basis for that opinion.

22 (5) The Michigan economic growth authority may approve not
23 more than 15 projects each calendar year under subsection (3), and
24 the following limitations apply:

25 (a) Of the 15 projects allowed under this subsection, the
26 total of all credits for each project may be more than
27 \$10,000,000.00 but \$30,000,000.00 or less for up to ~~3~~ 2 projects.

1 (b) Of the 15 projects allowed under this subsection, up to 3
2 projects may be approved for projects that are not in a qualified
3 local governmental unit if the property is a facility for which
4 eligible activities are identified in a brownfield plan. For
5 purposes of this subdivision, a facility includes a building or
6 complex of buildings that was used by a state or federal agency and
7 that is no longer being used for the purpose for which it was used
8 by the state or federal agency.

9 (c) Of the ~~3~~ 2 projects allowed under subdivision (a), 1 may
10 be a project that also qualifies under subdivision (b).

11 (6) The Michigan economic growth authority shall review all
12 applications for projects under subsection (3) and, if an
13 application is approved, shall determine the maximum total of all
14 credits for that project. Before approving a project for which the
15 total of all credits will be more than \$10,000,000.00 but
16 \$30,000,000.00 or less only, the Michigan economic growth authority
17 shall determine that the project would not occur in this state
18 without the tax credit offered under subsection (3), except that
19 the Michigan economic growth authority may approve 1 project the
20 construction of which began after January 1, 2000 and before
21 January 1, 2001 without determining that the eligible investment
22 would not occur in this state without the tax credit offered under
23 this section. The Michigan economic growth authority shall consider
24 the following criteria to the extent reasonably applicable to the
25 type of project proposed when approving a project under subsection
26 (3) and the chairperson of the Michigan economic growth authority
27 or his or her designee shall consider the following criteria to the

1 extent reasonably applicable to the type of project proposed when
2 approving a project under subsection (2) **OR (33)** or when
3 considering an amendment to a project under subsection (31):

4 (a) The overall benefit to the public.

5 (b) The extent of reuse of vacant buildings and redevelopment
6 of blighted property.

7 (c) Creation of jobs.

8 (d) Whether the eligible property is in an area of high
9 unemployment.

10 (e) The level and extent of contamination alleviated by the
11 qualified taxpayer's eligible activities to the extent known to the
12 qualified taxpayer.

13 (f) The level of private sector contribution.

14 (g) The cost gap that exists between the site and a similar
15 greenfield site as determined by the Michigan economic growth
16 authority.

17 (h) If the qualified taxpayer is moving from another location
18 in this state, whether the move will create a brownfield.

19 (i) Whether the financial statements of the qualified taxpayer
20 indicate that it is financially sound and that the project is
21 economically sound.

22 (j) Any other criteria that the Michigan economic growth
23 authority or the chairperson of the Michigan economic growth
24 authority, as applicable, considers appropriate for the
25 determination of eligibility under subsection (2) or (3).

26 (7) A qualified taxpayer may apply for projects under
27 subsection (2), ~~or~~ (3), **OR (33)** for eligible investment on more

1 than 1 eligible property in a tax year. Each project approved and
2 each project for which a certificate of completion is issued under
3 this section shall be for eligible investment on 1 eligible
4 property.

5 (8) When a project under subsection (2), ~~or~~ (3), **OR (33)** is
6 completed, the taxpayer shall submit documentation that the project
7 is completed, an accounting of the cost of the project, the
8 eligible investment of each taxpayer if there is more than 1
9 taxpayer eligible for a credit for the project, and, if the
10 taxpayer is not the owner or lessee of the eligible property on
11 which the eligible investment was made at the time the project is
12 completed, that the taxpayer was the owner or lessee of that
13 eligible property when all eligible investment of the taxpayer was
14 made. The chairperson of the Michigan economic growth authority or
15 his or her designee, for projects approved under subsection (2) **OR**
16 **(33)**, or the Michigan economic growth authority, for projects
17 approved under subsection (3), shall verify that the project is
18 completed. The Michigan economic growth authority shall conduct an
19 on-site inspection as part of the verification process **FOR PROJECTS**
20 **APPROVED UNDER SUBSECTION (3)**. When the completion of the project
21 is verified, a certificate of completion shall be issued to each
22 qualified taxpayer that has made eligible investment on that
23 eligible property. The certificate of completion shall state the
24 total amount of all credits for the project and that total shall
25 not exceed the maximum total of all credits listed in the
26 preapproval letter for the project under subsection (2) or (3) **OR**
27 **SECTION 35C** as applicable and shall state all of the following:

1 (a) That the taxpayer is a qualified taxpayer.

2 (b) The total cost of the project and the eligible investment
3 of each qualified taxpayer.

4 (c) Each qualified taxpayer's credit amount.

5 (d) The qualified taxpayer's federal employer identification
6 number or the Michigan treasury number assigned to the taxpayer.

7 (e) The project number.

8 (f) For a project approved under subsection (3) for which the
9 total of all credits is more than \$10,000,000.00 but \$30,000,000.00
10 or less, the total of all credits and the schedule on which the
11 annual credit amount shall be claimed by the qualified taxpayer.

12 (g) For a multiphase project under subsection (32), the amount
13 of each credit assigned and the amount of all credits claimed in
14 each tax year before the year in which the project is completed.

15 (9) Except as otherwise provided in this section, qualified
16 taxpayers shall claim credits under subsections (2), ~~and~~ (3), **AND**
17 **(33)** in the tax year in which the certificate of completion is
18 issued. For a project approved under subsection (3) for which the
19 total of all credits is more than \$10,000,000.00 but \$30,000,000.00
20 or less, the qualified taxpayer shall claim 10% of its approved
21 credit each year for 10 years. A credit assigned based on a
22 multiphase project shall be claimed in the year in which the credit
23 is assigned.

24 (10) The cost of eligible investment for leased machinery,
25 equipment, or fixtures is the cost of that property had the
26 property been purchased minus the lessor's estimate, made at the
27 time the lease is entered into, of the market value the property

1 will have at the end of the lease. A credit for property described
2 in this subsection is allowed only if the cost of that property had
3 the property been purchased and the lessor's estimate of the market
4 value at the end of the lease are provided to the Michigan economic
5 growth authority.

6 (11) For credits under subsections (2) and (3), credits
7 claimed by a lessee of eligible property are subject to the total
8 of all credits limitation under this section.

9 (12) Each qualified taxpayer and assignee under subsection
10 (17), ~~or~~ (18), **OR (34)** that claims a credit under subsection
11 (1)(a) or (b) **OR (33)** shall attach a copy of the certificate of
12 completion and, if the credit was assigned, a copy of the
13 assignment form provided for under this section to the annual
14 return filed under this act on which the credit under subsection
15 (2), ~~or~~ (3), **OR (33)** is claimed. An assignee of a credit based on
16 a multiphase project shall attach a copy of the assignment form
17 provided for under this section and the component completion
18 certificate provided for in subsection (32) to the annual return
19 filed under this act on which the credit is claimed but is not
20 required to file a copy of a certificate of completion.

21 (13) Except as otherwise provided in this subsection or
22 subsection (15), (17), ~~(19), or (32)~~ **(18), (32), OR (34)**, a
23 credit under subsection (2), ~~or~~ (3), **OR (33)** shall be claimed in
24 the tax year in which the certificate of completion is issued to
25 the qualified taxpayer. For a project described in subsection
26 (8)(f) for which a schedule for claiming annual credit amounts is
27 designated on the certificate of completion by the Michigan

1 economic growth authority, the annual credit amount shall be
2 claimed in the tax year specified on the certificate of completion.

3 (14) The credits approved under this section shall be
4 calculated after application of all other credits allowed under
5 this act. The credits under subsections (2), ~~and~~ (3), **AND (33)**
6 shall be calculated before the calculation of credits under
7 subsections (20) to (25) and before the credits under sections 37c
8 and 37d.

9 (15) If the credit allowed under subsection (2), ~~or~~ (3), **OR**
10 **(33)** for the tax year and any unused carryforward of the credit
11 allowed under subsection (2), ~~or~~ (3), **OR (33)** exceed the
12 qualified taxpayer's or assignee's tax liability for the tax year,
13 that portion that exceeds the tax liability for the tax year shall
14 not be refunded but may be carried forward to offset tax liability
15 in subsequent tax years for 10 years or until used up, whichever
16 occurs first. Except as otherwise provided in this subsection, the
17 maximum time allowed under the carryforward provisions under this
18 subsection begins with the tax year in which the certificate of
19 completion is issued to the qualified taxpayer. If the qualified
20 taxpayer assigns all or any portion of its credit approved under
21 subsection (2), ~~or~~ (3), **OR (33)**, the maximum time allowed under
22 the carryforward provisions for an assignee begins to run with the
23 tax year in which the assignment is made and the assignee first
24 claims a credit, which shall be the same tax year. The maximum time
25 allowed under the carryforward provisions for an annual credit
26 amount for a credit allowed under subsection (3) begins to run in
27 the tax year for which the annual credit amount is designated on

1 the certificate of completion issued under this section.

2 (16) If a project or credit under subsection (2), ~~or~~ (3), **OR**
3 **(33)** is for the addition of personal property, if the cost of that
4 personal property is used to calculate a credit under subsection
5 (2), ~~or~~ (3), **OR (33)**, and if the personal property is sold or
6 disposed of or transferred from eligible property to any other
7 location, the qualified taxpayer that sold, disposed of, or
8 transferred the personal property shall add the same percentage as
9 determined pursuant to subsection (1) of the federal basis of the
10 personal property used for determining gain or loss as of the date
11 of the sale, disposition, or transfer to the qualified taxpayer's
12 tax liability after application of all credits under this act for
13 the tax year in which the sale, disposition, or transfer occurs. If
14 a qualified taxpayer has an unused carryforward of a credit under
15 subsection (2), ~~or~~ (3), **OR (33)**, the amount otherwise added under
16 this subsection to the qualified taxpayer's tax liability may
17 instead be used to reduce the qualified taxpayer's carryforward
18 under subsection (15).

19 (17) For credits under ~~subsections~~ **SUBSECTION (2), and**
20 **(3), OR (33) FOR WHICH PREAPPROVAL LETTERS HAVE BEEN ISSUED BEFORE**
21 **JANUARY 1, 2006** and except as otherwise provided in this
22 subsection, if a qualified taxpayer pays or accrues eligible
23 investment on or to an eligible property that is leased for a
24 minimum term of 10 years or sold to another taxpayer for use in a
25 business activity, the qualified taxpayer may assign all or a
26 portion of the credit based on that eligible investment to the
27 lessee or purchaser of that eligible property. A credit assignment

1 under this subsection shall only be made to a taxpayer that when
2 the assignment is complete will be a qualified taxpayer. All credit
3 assignments under this subsection are irrevocable and, except for a
4 credit based on a multiphase project, shall be made in the tax year
5 in which the certificate of completion is issued, unless the
6 assignee is an unknown lessee. If a qualified taxpayer wishes to
7 assign all or a portion of its credit to a lessee but the lessee is
8 unknown in the tax year in which the certificate of completion is
9 issued, the qualified taxpayer may delay claiming and assigning the
10 credit until the first tax year in which the lessee is known. A
11 qualified taxpayer may claim a portion of a credit and assign the
12 remaining credit amount. Except as otherwise provided in this
13 subsection, if the qualified taxpayer both claims and assigns
14 portions of the credit, the qualified taxpayer shall claim the
15 portion it claims in the tax year in which the certificate of
16 completion is issued or for a credit assigned and claimed for a
17 multiphase project before a certificate of completion is issued,
18 the taxpayer shall claim the credit in the year in which the credit
19 is assigned. If a qualified taxpayer assigns all or a portion of
20 the credit and the eligible property is leased to more than 1
21 taxpayer, the qualified taxpayer shall determine the amount of
22 credit assigned to each lessee. A lessee shall not subsequently
23 assign a credit or any portion of a credit assigned under this
24 subsection. A purchaser may subsequently assign a credit or any
25 portion of a credit assigned to the purchaser under this subsection
26 to a lessee of the eligible property. The credit assignment under
27 this subsection shall be made on a form prescribed by the Michigan

1 economic growth authority. The qualified taxpayer shall send a copy
2 of the completed assignment form to the Michigan economic growth
3 authority in the tax year in which the assignment is made. The
4 assignee shall attach a copy of the completed assignment form to
5 its annual return required to be filed under this act, for the tax
6 year in which the assignment is made and the assignee first claims
7 a credit, which shall be the same tax year. In addition to all
8 other procedures under this subsection, the following apply if the
9 total of all credits for a project is more than \$10,000,000.00 but
10 \$30,000,000.00 or less:

11 (a) The credit shall be assigned based on the schedule
12 contained in the certificate of completion.

13 (b) If the qualified taxpayer assigns all or a portion of the
14 credit amount, the qualified taxpayer shall assign the annual
15 credit amount for each tax year separately.

16 (c) More than 1 annual credit amount may be assigned to any 1
17 assignee and the qualified taxpayer may assign all or a portion of
18 each annual credit amount to any assignee.

19 (d) The qualified taxpayer shall not assign more than the
20 annual credit amount for each tax year.

21 (18) If a qualified taxpayer is a partnership, limited
22 liability company, or subchapter S corporation, the qualified
23 taxpayer may assign all or a portion of a credit allowed under
24 subsection (2), ~~or~~ (3), **OR (33) FOR WHICH A PREAPPROVAL LETTER**
25 **HAS BEEN ISSUED BEFORE JANUARY 1, 2006** to its partners, members, or
26 shareholders, based on their proportionate share of ownership of
27 the partnership, limited liability company, or subchapter S

1 corporation or based on an alternative method approved by the
2 Michigan economic growth authority. A credit assignment under this
3 subsection is irrevocable and, except for a credit assignment based
4 on a multiphase project, shall be made in the tax year in which a
5 certificate of completion is issued. A qualified taxpayer may claim
6 a portion of a credit and assign the remaining credit amount. If
7 the qualified taxpayer both claims and assigns portions of the
8 credit, the qualified taxpayer shall claim the portion it claims in
9 the tax year in which a certificate of completion is issued. A
10 partner, member, or shareholder that is an assignee shall not
11 subsequently assign a credit or any portion of a credit assigned
12 under this subsection. The credit assignment under this subsection
13 shall be made on a form prescribed by the Michigan economic growth
14 authority. The qualified taxpayer shall send a copy of the
15 completed assignment form to the Michigan economic growth authority
16 in the tax year in which the assignment is made. A partner, member,
17 or shareholder who is an assignee shall attach a copy of the
18 completed assignment form to its annual return required under this
19 act, for the tax year in which the assignment is made and the
20 assignee first claims a credit, which shall be the same tax year.
21 In addition to all other procedures under this subsection, the
22 following apply if the total of all credits for a project is more
23 than \$10,000,000.00 but \$30,000,000.00 or less:

24 (a) The credit shall be assigned based on the schedule
25 contained in the certificate of completion.

26 (b) If the qualified taxpayer assigns all or a portion of the
27 credit amount, the qualified taxpayer shall assign the annual

1 credit amount for each tax year separately.

2 (c) More than 1 annual credit amount may be assigned to any 1
3 assignee and the qualified taxpayer may assign all or a portion of
4 each annual credit amount to any assignee.

5 (d) The qualified taxpayer shall not assign more than the
6 annual credit amount for each tax year.

7 (19) A qualified taxpayer or assignee under subsection (17) or
8 (18) shall not claim a credit under subsection (1)(a) or (b) based
9 on eligible investment on which a credit claimed under section 38d
10 was based.

11 (20) In addition to the other credits allowed under this
12 section and sections 37c and 37d, for tax years that begin after
13 December 31, 1999 and for a period of time not to exceed 20 years
14 as determined by the Michigan economic growth authority, an
15 eligible taxpayer may credit against the tax imposed by section 31
16 the amount certified each year by the Michigan economic growth
17 authority that is 1 of the following:

18 (a) For an eligible business under section 8(5)(a) of the
19 Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an
20 amount that is not more than 50% of 1 or both of the following as
21 determined by the Michigan economic growth authority:

22 (i) An amount determined under the Michigan economic growth
23 authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not
24 exceed the payroll of the eligible taxpayer attributable to
25 employees who perform retained jobs multiplied by the tax rate for
26 the tax year.

27 (ii) The tax liability attributable to the eligible taxpayer's

1 business activity multiplied by a fraction the numerator of which
2 is the ratio of the value of new capital investment to all of the
3 taxpayer's property located in this state plus the ratio of the
4 taxpayer's payroll attributable to retained jobs to all of the
5 taxpayer's payroll in this state and the denominator of which is 2.

6 (b) For an eligible business under section 8(5)(b) of the
7 Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an
8 amount that is not more than 1 or both of the following as
9 determined by the Michigan economic growth authority:

10 (i) An amount determined under the Michigan economic growth
11 authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not
12 exceed the payroll of the eligible taxpayer attributable to
13 employees who perform retained jobs multiplied by the tax rate for
14 the tax year.

15 (ii) The tax liability attributable to eligible taxpayer's
16 business activity multiplied by a fraction the numerator of which
17 is the ratio of the value of capital investment to all of the
18 taxpayer's property located in this state plus the ratio of the
19 taxpayer's payroll attributable to retained jobs to all of the
20 taxpayer's payroll in this state and the denominator of which is 2.

21 (21) An eligible taxpayer shall not claim a credit under
22 subsection (20) unless the Michigan economic growth authority has
23 issued a certificate under section 9 of the Michigan economic
24 growth authority act, 1995 PA 24, MCL 207.809, to the taxpayer. The
25 eligible taxpayer shall attach the certificate to the return filed
26 under this act on which a credit under subsection (20) is claimed.

27 (22) An affiliated group as defined in this act, a controlled

1 group of corporations as defined in section 1563 of the internal
2 revenue code and further described in 26 CFR 1.414(b)-1 and
3 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
4 defined by the internal revenue code shall claim only 1 credit
5 under subsection (20) for each tax year based on each written
6 agreement whether or not a combined or consolidated return is
7 filed.

8 (23) A credit shall not be claimed by a taxpayer under
9 subsection (20) if the eligible taxpayer's initial certification
10 under section 9 of the Michigan economic growth authority act, 1995
11 PA 24, MCL 207.809, is issued after December 31, 2009. If the
12 Michigan economic growth authority or a designee of the Michigan
13 economic growth authority requests that a taxpayer who claims the
14 credit under subsection (20) get a statement prepared by a
15 certified public accountant verifying that the actual number of new
16 jobs created is the same number of new jobs used to calculate the
17 credit under subsection (20), the taxpayer shall get the statement
18 and attach that statement to its annual return under this act on
19 which the credit under subsection (20) is claimed.

20 (24) If the credit allowed under subsection (20)(a)(ii) or
21 (b)(ii) for the tax year and any unused carryforward of the credit
22 allowed by subsection (20)(a)(ii) or (b)(ii) exceed the taxpayer's
23 tax liability for the tax year, that portion that exceeds the tax
24 liability for the tax year shall not be refunded but may be carried
25 forward to offset tax liability in subsequent tax years for 10
26 years or until used up, whichever occurs first.

27 (25) If the credit allowed under subsection (20)(a)(i) or

1 (b)(i) exceeds the tax liability of the eligible taxpayer for the
2 tax year, the excess shall be refunded to the eligible taxpayer.

3 (26) An eligible taxpayer that claims a credit under
4 subsection (1)(a), ~~or (b)~~ **(1)(B), OR (33)** is not prohibited from
5 claiming a credit under subsection (20). However, the eligible
6 taxpayer shall not claim a credit under ~~both subsections~~
7 **SUBSECTION (1)(a), ~~or (b)~~ (1)(B), OR (33)** and **SUBSECTION (20)**
8 based on the same costs.

9 (27) Eligible investment attributable or related to the
10 operation of a professional sports stadium, and eligible investment
11 that is associated or affiliated with the operation of a
12 professional sports stadium, including, but not limited to, the
13 operation of a parking lot or retail store, shall not be used as a
14 basis for a credit under subsection (2), ~~or (3)~~, **OR (33)**.

15 Professional sports stadium does not include a professional sports
16 stadium that will no longer be used by a professional sports team
17 on and after the date that an application related to that
18 professional sports stadium is filed under subsection (2), ~~or~~
19 **(3), OR (33)**.

20 (28) Eligible investment attributable or related to the
21 operation of a casino, and eligible investment that is associated
22 or affiliated with the operation of a casino, including, but not
23 limited to, the operation of a parking lot, hotel, motel, or retail
24 store, shall not be used as a basis for a credit under subsection
25 (2), ~~or (3)~~, **OR (33)**. As used in this subsection, "casino" means
26 a casino regulated by this state pursuant to the Michigan gaming
27 control and revenue act, the Initiated Law of 1996, MCL 432.201 to

1 432.226.

2 (29) Eligible investment attributable or related to the
3 construction of a new landfill or the expansion of an existing
4 landfill regulated under part 115 of the natural resources and
5 environmental protection act, 1994 PA 451, MCL 324.11501 to
6 324.11550, shall not be used as a basis for a credit under
7 subsection (2), ~~or~~ (3), **OR (33)**.

8 (30) The Michigan economic growth authority annually shall
9 prepare and submit to the house of representatives and senate
10 committees responsible for tax policy and economic development
11 issues a report on the credits under subsection (2). The report
12 shall include, but is not limited to, all of the following:

13 (a) A listing of the projects under subsection (2) that were
14 approved in the calendar year.

15 (b) The total amount of eligible investment for projects
16 approved under subsection (2) in the calendar year.

17 (31) If, after a taxpayer's project has been approved and the
18 taxpayer has received a preapproval letter but before the project
19 is completed, the taxpayer determines that the project cannot be
20 completed as preapproved, the taxpayer may petition the Michigan
21 economic growth authority to amend the project. The total of
22 eligible investment for the project as amended shall not exceed the
23 amount allowed in the preapproval letter for that project.

24 (32) A project under subsection (2) **OR (3)** may be a multiphase
25 project but, **FOR PROJECTS FOR WHICH A PREAPPROVAL LETTER HAS BEEN**
26 **ISSUED BEFORE JANUARY 1, 2006**, only if the project is an industrial
27 or manufacturing project. If a project is a multiphase project,

1 when each component of the multiphase project is completed, the
2 taxpayer shall submit documentation that the component is complete,
3 an accounting of the cost of the component, and the eligible
4 investment for the component of each taxpayer eligible for a credit
5 for the project of which the component is a part to the Michigan
6 economic growth authority or the designee of the Michigan economic
7 growth authority, who shall verify that the component is complete.
8 When the completion of the component is verified, a component
9 completion certificate shall be issued to the qualified taxpayer
10 which shall state that the taxpayer is a qualified taxpayer, the
11 credit amount for the component, the qualified taxpayer's federal
12 employer identification number or the Michigan treasury number
13 assigned to the taxpayer, and the project number. The taxpayer may
14 assign all or part of the credit for a multiphase project as
15 provided in this section after a component completion certificate
16 for a component is issued. The qualified taxpayer may transfer
17 ownership of or lease the completed component and assign a
18 proportionate share of the credit for the entire project to the
19 qualified taxpayer that is the new owner or lessee. A multiphase
20 project shall not be divided into more than ~~3~~ 20 components. A
21 component is considered to be completed when a certificate of
22 occupancy has been issued by the local municipality in which the
23 project is located for all of the buildings or facilities that
24 comprise the completed component and a component completion
25 certificate is issued. A credit assigned based on a multiphase
26 project shall be claimed by the assignee in the tax year in which
27 the assignment is made. The total of all credits for a multiphase

1 project shall not exceed the amount stated in the preapproval
2 letter for the project under subsection (1)(a). If all components
3 of a multiphase project are not completed by 10 years after the
4 date on which the preapproval letter for the project was issued,
5 the qualified taxpayer that received the preapproval letter for the
6 project shall pay to the state treasurer, as a penalty, an amount
7 equal to the sum of all credits claimed and assigned for all
8 components of the multiphase project and no credits based on that
9 multiphase project shall be claimed after that date by the
10 qualified taxpayer or any assignee of the qualified taxpayer. The
11 penalty under this subsection is subject to interest on the amount
12 of the credit claimed or assigned determined individually for each
13 component at the rate in section 23(2) of 1941 PA 122, MCL 205.23,
14 beginning on the date that the credit for that component was
15 claimed or assigned. As used in this subsection, "proportionate
16 share" means the same percentage of the total of all credits for
17 the project that the qualified investment for the completed
18 component is of the total qualified investment stated in the
19 preapproval letter for the entire project.

20 (33) IF THE TOTAL OF ALL CREDITS FOR A PROJECT IS \$200,000.00
21 OR LESS, A QUALIFIED TAXPAYER SHALL APPLY TO THE MICHIGAN ECONOMIC
22 GROWTH AUTHORITY FOR APPROVAL OF THE PROJECT UNDER THIS SUBSECTION.
23 AN APPLICATION UNDER THIS SUBSECTION SHALL STATE WHETHER THE
24 PROJECT IS A MULTIPHASE PROJECT. SUBJECT TO SECTION 35C, THE
25 CHAIRPERSON OF THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR HIS OR HER
26 DESIGNEE IS AUTHORIZED TO APPROVE AN APPLICATION OR PROJECT UNDER
27 THIS SUBSECTION. ONLY THE CHAIRPERSON OF THE MICHIGAN ECONOMIC

1 GROWTH AUTHORITY IS AUTHORIZED TO DENY AN APPLICATION OR PROJECT
2 UNDER THIS SUBSECTION. A PROJECT SHALL BE APPROVED OR DENIED NOT
3 MORE THAN 45 DAYS AFTER RECEIPT OF THE APPLICATION. IF THE
4 CHAIRPERSON OF THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR HIS OR HER
5 DESIGNEE DOES NOT APPROVE OR DENY THE APPLICATION WITHIN 45 DAYS
6 AFTER THE APPLICATION IS RECEIVED BY THE MICHIGAN ECONOMIC GROWTH
7 AUTHORITY, THE APPLICATION IS CONSIDERED APPROVED AS WRITTEN. THE
8 TOTAL OF ALL CREDITS FOR ALL PROJECTS APPROVED UNDER THIS
9 SUBSECTION SHALL NOT EXCEED \$10,000,000.00 IN ANY CALENDAR YEAR. IF
10 THE CHAIRPERSON OF THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR HIS OR
11 HER DESIGNEE APPROVES A PROJECT UNDER THIS SUBSECTION, THE
12 CHAIRPERSON OF THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR HIS OR HER
13 DESIGNEE SHALL ISSUE A PREAPPROVAL LETTER THAT STATES THAT THE
14 TAXPAYER IS A QUALIFIED TAXPAYER; THE MAXIMUM TOTAL ELIGIBLE
15 INVESTMENT FOR THE PROJECT ON WHICH CREDITS MAY BE CLAIMED AND THE
16 MAXIMUM TOTAL OF ALL CREDITS FOR THE PROJECT WHEN THE PROJECT IS
17 COMPLETED AND A CERTIFICATE OF COMPLETION IS ISSUED; AND THE
18 PROJECT NUMBER ASSIGNED BY THE MICHIGAN ECONOMIC GROWTH AUTHORITY.
19 IF A PROJECT IS DENIED UNDER THIS SUBSECTION, A TAXPAYER IS NOT
20 PROHIBITED FROM SUBSEQUENTLY APPLYING UNDER THIS SUBSECTION FOR THE
21 SAME PROJECT OR FOR ANOTHER PROJECT. THE MICHIGAN ECONOMIC GROWTH
22 AUTHORITY SHALL USE THE CRITERIA UNDER SUBSECTION (6) TO APPROVE A
23 PROJECT UNDER THIS SUBSECTION. ON JUNE 30 EACH YEAR, IF THE TOTAL
24 OF ALL CREDITS FOR ALL PROJECTS APPROVED UNDER THIS SUBSECTION FOR
25 THE CALENDAR YEAR IS LESS THAN \$10,000,000.00, THE MICHIGAN
26 ECONOMIC GROWTH AUTHORITY MAY USE THE DIFFERENCE BETWEEN
27 \$10,000,000.00 AND THE AMOUNT APPROVED TO FUND CREDITS UNDER

1 SUBSECTION (2).

2 (34) FOR PROJECTS APPROVED UNDER SUBSECTION (2), (3), OR (33)
3 FOR WHICH A PREAPPROVAL LETTER HAS BEEN ISSUED AFTER DECEMBER 31,
4 2005, AN ELIGIBLE TAXPAYER MAY ASSIGN ALL OR A PORTION OF A CREDIT
5 ALLOWED UNDER SUBSECTION (2), (3), OR (33). A CREDIT ASSIGNMENT
6 UNDER THIS SUBSECTION IS IRREVOCABLE AND SHALL BE MADE IN THE TAX
7 YEAR IN WHICH THE CREDIT UNDER SUBSECTION (2), (3), OR (33) MAY
8 FIRST BE CLAIMED BY THE ELIGIBLE TAXPAYER. AN ELIGIBLE TAXPAYER MAY
9 CLAIM A PORTION OF THE CREDIT AND ASSIGN A PORTION OF THE REMAINING
10 CREDIT AMOUNT. IF THE ELIGIBLE TAXPAYER BOTH CLAIMS AND ASSIGNS
11 PORTIONS OF THE CREDIT, THE ELIGIBLE TAXPAYER SHALL CLAIM THE
12 PORTION IT CLAIMS IN THE FIRST TAX YEAR IN WHICH THE CREDIT UNDER
13 SUBSECTION (2), (3), OR (33) MAY BE CLAIMED. AN ASSIGNEE MAY
14 SUBSEQUENTLY ASSIGN A CREDIT OR ANY PORTION OF A CREDIT ASSIGNED
15 UNDER THIS SUBSECTION TO 1 OR MORE ASSIGNEES. AN ASSIGNMENT OF A
16 CREDIT ALLOWED UNDER THIS SUBSECTION SHALL NOT BE MADE AFTER 10
17 YEARS AFTER THE FIRST TAX YEAR IN WHICH THE CREDIT UNDER SUBSECTION
18 (2), (3), OR (33) MAY BE CLAIMED. A CREDIT ASSIGNMENT UNDER THIS
19 SUBSECTION SHALL BE MADE ON A FORM PRESCRIBED BY THE DEPARTMENT.
20 THE ELIGIBLE TAXPAYER OR SUBSEQUENT ASSIGNEE SHALL SEND A COPY OF
21 THE COMPLETED ASSIGNMENT FORM TO THE DEPARTMENT IN THE TAX YEAR IN
22 WHICH THE ASSIGNMENT IS MADE. THE ASSIGNEE SHALL ATTACH A COPY OF
23 THE COMPLETED ASSIGNMENT FORM TO ITS ANNUAL RETURN REQUIRED UNDER
24 THIS ACT, FOR THE TAX YEAR IN WHICH THE ASSIGNMENT IS MADE AND THE
25 ASSIGNEE FIRST CLAIMS A CREDIT, WHICH SHALL BE THE SAME TAX YEAR.

26 (35) ~~-(33)-~~ As used in this section:

27 (a) "Annual credit amount" means the maximum amount that a

1 qualified taxpayer is eligible to claim each tax year for a project
2 for which the total of all credits is more than \$10,000,000.00 but
3 \$30,000,000.00 or less, which shall be 10% of the qualified
4 taxpayer's credit amount approved under subsection (3).

5 (b) "Authority" means a brownfield redevelopment authority
6 created under the brownfield redevelopment financing act, 1996 PA
7 381, MCL 125.2651 to 125.2672.

8 (c) "Authorized business", "full-time job", "new capital
9 investment", "qualified high-technology business", "retained jobs",
10 and "written agreement" mean those terms as defined in the Michigan
11 economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

12 (d) "Blighted", "brownfield plan", "eligible activities",
13 "eligible property", "facility", "functionally obsolete", and
14 "response activity" mean those terms as defined in the brownfield
15 redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

16 (e) "Eligible investment" means demolition, construction,
17 restoration, alteration, renovation, or improvement of buildings or
18 site improvements on eligible property and the addition of
19 machinery, equipment, and fixtures to eligible property after the
20 date that eligible activities on that eligible property have
21 started pursuant to a brownfield plan under the brownfield
22 redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672,
23 and after the date that the preapproval letter is issued, except
24 that the date that the preapproval letter is issued is not a
25 limitation for 1 project the construction of which began after
26 January 1, 2000 and before January 1, 2001 without the Michigan
27 economic growth authority determining that the project would not

1 occur in this state without the tax credit offered under this
2 section as provided in subsection (7), if the costs of the eligible
3 investment are not otherwise reimbursed to the taxpayer or paid for
4 on behalf of the taxpayer from any source other than the taxpayer.
5 The addition of leased machinery, equipment, or fixtures to
6 eligible property by a lessee of the machinery, equipment, or
7 fixtures is eligible investment if the lease of the machinery,
8 equipment, or fixtures has a minimum term of 10 years or is for the
9 expected useful life of the machinery, equipment, or fixtures, and
10 if the owner of the machinery, equipment, or fixtures is not the
11 qualified taxpayer with regard to that machinery, equipment, or
12 fixtures.

13 (f) "Eligible taxpayer" means an eligible business that meets
14 the criteria under section 8(5) of the Michigan economic growth
15 authority act, 1995 PA 24, MCL 207.808.

16 (g) "Michigan economic growth authority" means the Michigan
17 economic growth authority created in the Michigan economic growth
18 authority act, 1995 PA 24, MCL 207.801 to 207.810.

19 (h) "Multiphase project" means a project for which the total
20 of all credits is \$1,000,000.00 or less for a project approved
21 under subsection (2) that has more than 1 component, each of which
22 can be completed separately.

23 (i) "Payroll" and "tax rate" mean those terms as defined in
24 section 37c.

25 (j) "Personal property" means that term as defined in section
26 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
27 that personal property does not include either of the following:

1 (i) Personal property described in section 8(h), (i), or (j) of
2 the general property tax act, 1893 PA 206, MCL 211.8.

3 (ii) Buildings described in section 14(6) of the general
4 property tax act, 1893 PA 206, MCL 211.14.

5 (k) "Project" means the total of all eligible investment on an
6 eligible property or, for purposes of subsection (5)(b), all
7 eligible investment on property not in a qualified local
8 governmental unit that is a facility.

9 (l) "Qualified local governmental unit" means that term as
10 defined in the obsolete property rehabilitation act, 2000 PA 146,
11 MCL 125.2781 to 125.2797.

12 (m) "Qualified taxpayer" means a taxpayer that meets both of
13 the following criteria:

14 (i) Owns or leases eligible property.

15 (ii) Certifies that, except as otherwise provided in this
16 subparagraph, the department of environmental quality has not sued
17 or issued a unilateral order to the taxpayer pursuant to part 201
18 of the natural resources and environmental protection act, 1994 PA
19 451, MCL 324.20101 to 324.20142, to compel response activity on or
20 to the eligible property, or expended any state funds for response
21 activity on or to the eligible property and demanded reimbursement
22 for those expenditures from the qualified taxpayer. However, if the
23 taxpayer has completed all response activity required by part 201
24 of the natural resources and environmental protection act, 1994 PA
25 451, MCL 324.20101 to 324.20142, is in compliance with any deed
26 restriction or administrative or judicial order related to the
27 required response activity, and has reimbursed the state for all

1 costs incurred by the state related to the required response
2 activity, the taxpayer meets the criteria under this subparagraph.

3 (n) "Tax liability attributable to authorized business
4 activity" means the tax liability imposed by this act after the
5 calculation of credits provided in sections 36, 37, and 39.

6 Enacting section 1. This amendatory act does not take effect
7 unless House Bill No. 4733 of the 93rd Legislature is enacted into
8 law.