

HOUSE BILL No. 6342

August 9, 2006, Introduced by Reps. Leland, Donigan, Byrnes, Gonzales, Miller, Alma Smith, Tobocman, Hood, Kolb, Sheltroun, Hunter, Sak, Polidori, Espinoza, Mayes, Vagnozzi, Zelenko, Clack, Kathleen Law, Cushingberry, Plakas, Accavitti, Condino, Angerer, Bennett, Bieda, Lemmons, Jr., McDowell, Byrum, Gillard, Murphy, Meisner and Lemmons, III and referred to the Committee on Commerce.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending section 38g (MCL 208.38g), as amended by 2006 PA 240.

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 section 35e

1 may claim a credit that has been approved under subsection (2),
2 (3), or (33) against the tax imposed by this act equal to either of
3 the following:

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

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

23 (2) If the cost of a project will be for more than
24 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer
25 shall apply to the Michigan economic growth authority for approval
26 of the project under this subsection. An application under this
27 subsection shall state whether the project is a multiphase project.

1 The chairperson of the Michigan economic growth authority or his or
2 her designee is authorized to approve an application or project
3 under this subsection. Only the chairperson of the Michigan
4 economic growth authority is authorized to deny an application or
5 project under this subsection. A project shall be approved or
6 denied not more than 45 days after receipt of the application. If
7 the chairperson of the Michigan economic growth authority or his or
8 her designee does not approve or deny an application within 45 days
9 after the application is received by the Michigan economic growth
10 authority, the application is considered approved as written. The
11 total of all credits for all projects approved under this
12 subsection shall not exceed \$30,000,000.00 in any calendar year.
13 After the first full calendar year after the effective date of the
14 amendatory act that added subsection (33), if the authority
15 approves a total of all credits for all projects under this
16 subsection of less than \$30,000,000.00 in a calendar year, the
17 authority may carry forward for 1 year only the difference between
18 \$30,000,000.00 and the total of all credits for all projects
19 approved under this subsection in the immediately preceding
20 calendar year. The criteria in subsection (6) shall be used when
21 approving projects under this subsection. When approving projects
22 under this subsection, priority shall be given to projects on a
23 facility. The total of all credits for an approved project under
24 this subsection shall not exceed \$1,000,000.00. A taxpayer may
25 apply under this subsection instead of subsection (3) for approval
26 of a project that will be for more than \$10,000,000.00 but the
27 total of all credits for that project shall not exceed

1 \$1,000,000.00. If the chairperson of the Michigan economic growth
2 authority or his or her designee approves a project under this
3 subsection, the chairperson of the Michigan economic growth
4 authority or his or her designee shall issue a preapproval letter
5 that states that the taxpayer is a qualified taxpayer; the maximum
6 total eligible investment for the project on which credits may be
7 claimed and the maximum total of all credits for the project when
8 the project is completed and a certificate of completion is issued;
9 and the project number assigned by the Michigan economic growth
10 authority. If a project is denied under this subsection, a taxpayer
11 is not prohibited from subsequently applying under this subsection
12 or subsection (3) for the same project or for another project.

13 (3) If the cost of a project will be for more than
14 \$10,000,000.00 and, except as provided in subsection (5)(b), the
15 project is located in a qualified local governmental unit, a
16 qualified taxpayer shall apply to the Michigan economic growth
17 authority for approval of the project. An application under this
18 subsection shall state whether the project is a multiphase project.
19 The Michigan economic growth authority shall approve or deny the
20 project not more than 65 days after receipt of the application. A
21 project under this subsection shall not be approved without the
22 concurrence of the state treasurer. If the Michigan economic growth
23 authority does not approve or deny the application within 65 days
24 after it receives the application, the Michigan economic growth
25 authority shall send the application to the state treasurer. The
26 state treasurer shall approve or deny the application within 5 days
27 after receipt of the application. If the state treasurer does not

1 deny the application within the 5 days after receipt of the
2 application, the application is considered approved. The Michigan
3 economic growth authority shall approve a limited number of
4 projects under this subsection during each calendar year as
5 provided in subsection (5). The Michigan economic growth authority
6 shall use the criteria in subsection (6) when approving projects
7 under this subsection, when determining the total amount of
8 eligible investment, and when determining the percentage of
9 eligible investment for the project to be used to calculate a
10 credit. The total of all credits for an approved project under this
11 subsection shall not exceed the amount designated in the
12 preapproval letter for that project. If the Michigan economic
13 growth authority approves a project under this subsection, the
14 Michigan economic growth authority shall issue a preapproval letter
15 that states that the taxpayer is a qualified taxpayer; the
16 percentage of eligible investment for the project determined by the
17 Michigan economic growth authority for purposes of subsection
18 (1)(b); the maximum total eligible investment for the project on
19 which credits may be claimed and the maximum total of all credits
20 for the project when the project is completed and a certificate of
21 completion is issued; and the project number assigned by the
22 Michigan economic growth authority. The Michigan economic growth
23 authority shall send a copy of the preapproval letter to the
24 department. If a project is denied under this subsection, a
25 taxpayer is not prohibited from subsequently applying under this
26 subsection or subsection (2) for the same project or for another
27 project.

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

6 (5) The Michigan economic growth authority may approve not
7 more than 17 projects each calendar year under subsection (3), and
8 the following limitations apply:

9 (a) Of the 17 projects allowed under this subsection, the
10 total of all credits for each project may be more than
11 \$10,000,000.00 but \$30,000,000.00 or less for up to 2 projects.

12 (b) Of the 17 projects allowed under this subsection, up to 3
13 projects may be approved for projects that are not in a qualified
14 local governmental unit if the property is a facility for which
15 eligible activities are identified in a brownfield plan or, for 1
16 of the 3 projects, if the property is not a facility but is
17 functionally obsolete or blighted, property identified in a
18 brownfield plan. For purposes of this subdivision, a facility
19 includes a building or complex of buildings that was used by a
20 state or federal agency and that is no longer being used for the
21 purpose for which it was used by the state or federal agency.

22 (c) Of the 2 projects allowed under subdivision (a), 1 may be
23 a project that also qualifies under subdivision (b).

24 (6) The Michigan economic growth authority shall review all
25 applications for projects under subsection (3) and, if an
26 application is approved, shall determine the maximum total of all
27 credits for that project. Before approving a project for which the

1 total of all credits will be more than \$10,000,000.00 but
2 \$30,000,000.00 or less only, the Michigan economic growth authority
3 shall determine that the project would not occur in this state
4 without the tax credit offered under subsection (3), except that
5 the Michigan economic growth authority may approve 1 project the
6 construction of which began after January 1, 2000 and before
7 January 1, 2001 without determining that the eligible investment
8 would not occur in this state without the tax credit offered under
9 this section. The Michigan economic growth authority shall consider
10 the following criteria to the extent reasonably applicable to the
11 type of project proposed when approving a project under subsection
12 (3) and the chairperson of the Michigan economic growth authority
13 or his or her designee shall consider the following criteria to the
14 extent reasonably applicable to the type of project proposed when
15 approving a project under subsection (2) or (33) or when
16 considering an amendment to a project under subsection (31):

17 (a) The overall benefit to the public.

18 (b) The extent of reuse of vacant buildings and redevelopment
19 of blighted property.

20 (c) Creation of jobs.

21 (d) Whether the eligible property is in an area of high
22 unemployment.

23 (e) The level and extent of contamination alleviated by the
24 qualified taxpayer's eligible activities to the extent known to the
25 qualified taxpayer.

26 (f) The level of private sector contribution.

27 (g) The cost gap that exists between the site and a similar

1 greenfield site as determined by the Michigan economic growth
2 authority.

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

5 (i) Whether the financial statements of the qualified taxpayer
6 indicate that it is financially sound and that the project is
7 economically sound.

8 (j) Any other criteria that the Michigan economic growth
9 authority or the chairperson of the Michigan economic growth
10 authority, as applicable, considers appropriate for the
11 determination of eligibility under subsection (2) or (3).

12 (7) A qualified taxpayer may apply for projects under
13 subsection (2), (3), or (33) for eligible investment on more than 1
14 eligible property in a tax year. Each project approved and each
15 project for which a certificate of completion is issued under this
16 section shall be for eligible investment on 1 eligible property.

17 (8) When a project under subsection (2), (3), or (33) is
18 completed, the taxpayer shall submit documentation that the project
19 is completed, an accounting of the cost of the project, the
20 eligible investment of each taxpayer if there is more than 1
21 taxpayer eligible for a credit for the project, and, if the
22 taxpayer is not the owner or lessee of the eligible property on
23 which the eligible investment was made at the time the project is
24 completed, that the taxpayer was the owner or lessee of that
25 eligible property when all eligible investment of the taxpayer was
26 made. The chairperson of the Michigan economic growth authority or
27 his or her designee, for projects approved under subsection (2) or

(33), or the Michigan economic growth authority, for projects approved under subsection (3), shall verify that the project is completed. The Michigan economic growth authority shall conduct an on-site inspection as part of the verification process for projects approved under subsection (3). When the completion of the project is verified, a certificate of completion shall be issued to each qualified taxpayer that has made eligible investment on that eligible property. The certificate of completion shall state the total amount of all credits for the project and that total shall not exceed the maximum total of all credits listed in the preapproval letter for the project under subsection (2) or (3) or section 35c as applicable and shall state all of the following:

(a) That the taxpayer is a qualified taxpayer.

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

(c) Each qualified taxpayer's credit amount.

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

(e) The project number.

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

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

(9) Except as otherwise provided in this section, qualified

1 taxpayers shall claim credits under subsections (2), (3), and (33)
2 in the tax year in which the certificate of completion is issued.
3 For a project approved under subsection (3) for which the total of
4 all credits is more than \$10,000,000.00 but \$30,000,000.00 or less,
5 the qualified taxpayer shall claim 10% of its approved credit each
6 year for 10 years. A credit assigned based on a multiphase project
7 shall be claimed in the year in which the credit is assigned.

8 (10) The cost of eligible investment for leased machinery,
9 equipment, or fixtures is the cost of that property had the
10 property been purchased minus the lessor's estimate, made at the
11 time the lease is entered into, of the market value the property
12 will have at the end of the lease. A credit for property described
13 in this subsection is allowed only if the cost of that property had
14 the property been purchased and the lessor's estimate of the market
15 value at the end of the lease are provided to the Michigan economic
16 growth authority.

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

20 (12) Each qualified taxpayer and assignee under subsection
21 (17) or (18) or section 35e that claims a credit under subsection
22 (1)(a) or (b) or (33) shall attach a copy of the certificate of
23 completion and, if the credit was assigned, a copy of the
24 assignment form provided for under this section to the annual
25 return filed under this act on which the credit under subsection
26 (2), (3), or (33) is claimed. An assignee of a credit based on a
27 multiphase project shall attach a copy of the assignment form

1 provided for under this section and the component completion
2 certificate provided for in subsection (32) to the annual return
3 filed under this act on which the credit is claimed but is not
4 required to file a copy of a certificate of completion.

5 (13) Except as otherwise provided in this subsection or
6 subsection (15), (17), (18), or (32) or section 35e, a credit under
7 subsection (2), (3), or (33) shall be claimed in the tax year in
8 which the certificate of completion is issued to the qualified
9 taxpayer. For a project described in subsection (8)(f) for which a
10 schedule for claiming annual credit amounts is designated on the
11 certificate of completion by the Michigan economic growth
12 authority, the annual credit amount shall be claimed in the tax
13 year specified on the certificate of completion.

14 (14) The credits approved under this section shall be
15 calculated after application of all other credits allowed under
16 this act. The credits under subsections (2), (3), and (33) shall be
17 calculated before the calculation of credits under subsections (20)
18 to (25) and before the credits under sections 37c and 37d.

19 (15) If the credit allowed under subsection (2), (3), or (33)
20 for the tax year and any unused carryforward of the credit allowed
21 under subsection (2), (3), or (33) exceed the qualified taxpayer's
22 or assignee's tax liability for the tax year, that portion that
23 exceeds the tax liability for the tax year shall not be refunded
24 but may be carried forward to offset tax liability in subsequent
25 tax years for 10 years or until used up, whichever occurs first.
26 Except as otherwise provided in this subsection, the maximum time
27 allowed under the carryforward provisions under this subsection

1 begins with the tax year in which the certificate of completion is
2 issued to the qualified taxpayer. If the qualified taxpayer assigns
3 all or any portion of its credit approved under subsection (2),
4 (3), or (33), the maximum time allowed under the carryforward
5 provisions for an assignee begins to run with the tax year in which
6 the assignment is made and the assignee first claims a credit,
7 which shall be the same tax year. The maximum time allowed under
8 the carryforward provisions for an annual credit amount for a
9 credit allowed under subsection (3) begins to run in the tax year
10 for which the annual credit amount is designated on the certificate
11 of completion issued under this section.

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

1 subsection (15).

2 (17) For credits under subsection (2), (3), or (33) for
3 projects for which a certificate of completion is issued before
4 January 1, 2006 and except as otherwise provided in this
5 subsection, if a qualified taxpayer pays or accrues eligible
6 investment on or to an eligible property that is leased for a
7 minimum term of 10 years or sold to another taxpayer for use in a
8 business activity, the qualified taxpayer may assign all or a
9 portion of the credit based on that eligible investment to the
10 lessee or purchaser of that eligible property. A credit assignment
11 under this subsection shall only be made to a taxpayer that when
12 the assignment is complete will be a qualified taxpayer. All credit
13 assignments under this subsection are irrevocable and, except for a
14 credit based on a multiphase project, shall be made in the tax year
15 in which the certificate of completion is issued, unless the
16 assignee is an unknown lessee. If a qualified taxpayer wishes to
17 assign all or a portion of its credit to a lessee but the lessee is
18 unknown in the tax year in which the certificate of completion is
19 issued, the qualified taxpayer may delay claiming and assigning the
20 credit until the first tax year in which the lessee is known. A
21 qualified taxpayer may claim a portion of a credit and assign the
22 remaining credit amount. Except as otherwise provided in this
23 subsection, if the qualified taxpayer both claims and assigns
24 portions of the credit, the qualified taxpayer shall claim the
25 portion it claims in the tax year in which the certificate of
26 completion is issued or for a credit assigned and claimed for a
27 multiphase project before a certificate of completion is issued,

1 the taxpayer shall claim the credit in the year in which the credit
2 is assigned. If a qualified taxpayer assigns all or a portion of
3 the credit and the eligible property is leased to more than 1
4 taxpayer, the qualified taxpayer shall determine the amount of
5 credit assigned to each lessee. A lessee shall not subsequently
6 assign a credit or any portion of a credit assigned under this
7 subsection. A purchaser may subsequently assign a credit or any
8 portion of a credit assigned to the purchaser under this subsection
9 to a lessee of the eligible property. The credit assignment under
10 this subsection shall be made on a form prescribed by the Michigan
11 economic growth authority. The qualified taxpayer shall send a copy
12 of the completed assignment form to the Michigan economic growth
13 authority in the tax year in which the assignment is made. The
14 assignee shall attach a copy of the completed assignment form to
15 its annual return required to be filed under this act, for the tax
16 year in which the assignment is made and the assignee first claims
17 a credit, which shall be the same tax year. In addition to all
18 other procedures under this subsection, the following apply if the
19 total of all credits for a project is more than \$10,000,000.00 but
20 \$30,000,000.00 or less:

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

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

26 (c) More than 1 annual credit amount may be assigned to any 1
27 assignee and the qualified taxpayer may assign all or a portion of

1 each annual credit amount to any assignee.

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

4 (18) Except as otherwise provided in this subsection, for
5 projects for which a certificate of completion is issued before
6 January 1, 2006, if a qualified taxpayer is a partnership, limited
7 liability company, or subchapter S corporation, the qualified
8 taxpayer may assign all or a portion of a credit allowed under
9 subsection (2) or (3) to its partners, members, or shareholders,
10 based on their proportionate share of ownership of the partnership,
11 limited liability company, or subchapter S corporation or based on
12 an alternative method approved by the Michigan economic growth
13 authority. A credit assignment under this subsection is irrevocable
14 and, except for a credit assignment based on a multiphase project,
15 shall be made in the tax year in which a certificate of completion
16 is issued. A qualified taxpayer may claim a portion of a credit and
17 assign the remaining credit amount. If the qualified taxpayer both
18 claims and assigns portions of the credit, the qualified taxpayer
19 shall claim the portion it claims in the tax year in which a
20 certificate of completion is issued. A partner, member, or
21 shareholder that is an assignee shall not subsequently assign a
22 credit or any portion of a credit assigned under this subsection.
23 The credit assignment under this subsection shall be made on a form
24 prescribed by the Michigan economic growth authority. The qualified
25 taxpayer shall send a copy of the completed assignment form to the
26 Michigan economic growth authority in the tax year in which the
27 assignment is made. A partner, member, or shareholder who is an

1 assignee shall attach a copy of the completed assignment form to
2 its annual return required under this act, for the tax year in
3 which the assignment is made and the assignee first claims a
4 credit, which shall be the same tax year. A credit assignment based
5 on a credit for a component of a multiphase project that is
6 completed before January 1, 2006 shall be made under this
7 subsection. A credit assignment based on a credit for a component
8 of a multiphase project that is completed on or after January 1,
9 2006 may be made under this section or section 35e. In addition to
10 all other procedures under this subsection, the following apply if
11 the total of all credits for a project is more than \$10,000,000.00
12 but \$30,000,000.00 or less:

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

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

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

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

23 (19) A qualified taxpayer or assignee under subsection (17) or
24 (18) shall not claim a credit under subsection (1)(a) or (b) based
25 on eligible investment on which a credit claimed under section 38d
26 was based.

27 (20) In addition to the other credits allowed under this

1 section and sections 37c and 37d, for tax years that begin after
2 December 31, 1999 and for a period of time not to exceed 20 years
3 as determined by the Michigan economic growth authority, an
4 eligible taxpayer may credit against the tax imposed by section 31
5 the amount certified each year by the Michigan economic growth
6 authority that is 1 of the following:

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

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

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

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

26 (i) An amount determined under the Michigan economic growth
27 authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not

1 exceed the payroll of the eligible taxpayer attributable to
2 employees who perform retained jobs multiplied by the tax rate for
3 the tax year.

4 (ii) The tax liability attributable to eligible taxpayer's
5 business activity multiplied by a fraction the numerator of which
6 is the ratio of the value of capital investment to all of the
7 taxpayer's property located in this state plus the ratio of the
8 taxpayer's payroll attributable to retained jobs to all of the
9 taxpayer's payroll in this state and the denominator of which is 2.

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

16 (22) An affiliated group as defined in this act, a controlled
17 group of corporations as defined in section 1563 of the internal
18 revenue code and further described in 26 CFR 1.414(b)-1 and
19 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
20 defined by the internal revenue code shall claim only 1 credit
21 under subsection (20) for each tax year based on each written
22 agreement whether or not a combined or consolidated return is
23 filed.

24 (23) A credit shall not be claimed by a taxpayer under
25 subsection (20) if the eligible taxpayer's initial certification
26 under section 9 of the Michigan economic growth authority act, 1995
27 PA 24, MCL 207.809, is issued after December 31, 2009. If the

1 Michigan economic growth authority or a designee of the Michigan
2 economic growth authority requests that a taxpayer who claims the
3 credit under subsection (20) get a statement prepared by a
4 certified public accountant verifying that the actual number of new
5 jobs created is the same number of new jobs used to calculate the
6 credit under subsection (20), the taxpayer shall get the statement
7 and attach that statement to its annual return under this act on
8 which the credit under subsection (20) is claimed.

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

16 (25) If the credit allowed under subsection (20)(a)(i) or
17 (b)(i) exceeds the tax liability of the eligible taxpayer for the
18 tax year, the excess shall be refunded to the eligible taxpayer.

19 (26) An eligible taxpayer that claims a credit under
20 subsection (1)(a), (1)(b), or (33) is not prohibited from claiming
21 a credit under subsection (20). However, the eligible taxpayer
22 shall not claim a credit under subsection (1)(a), (1)(b), or (33)
23 and subsection (20) based on the same costs.

24 (27) Eligible investment attributable or related to the
25 operation of a professional sports stadium, and eligible investment
26 that is associated or affiliated with the operation of a
27 professional sports stadium, including, but not limited to, the

1 operation of a parking lot or retail store, shall not be used as a
2 basis for a credit under subsection (2), (3), or (33). Professional
3 sports stadium does not include a professional sports stadium that
4 will no longer be used by a professional sports team on and after
5 the date that an application related to that professional sports
6 stadium is filed under subsection (2), (3), or (33).

7 (28) Eligible investment attributable or related to the
8 operation of a casino, and eligible investment that is associated
9 or affiliated with the operation of a casino, including, but not
10 limited to, the operation of a parking lot, hotel, motel, or retail
11 store, shall not be used as a basis for a credit under subsection
12 (2), (3), or (33). As used in this subsection, "casino" means a
13 casino regulated by this state pursuant to the Michigan gaming
14 control and revenue act, the Initiated Law of 1996, MCL 432.201 to
15 432.226.

16 (29) Eligible investment attributable or related to the
17 construction of a new landfill or the expansion of an existing
18 landfill regulated under part 115 of the natural resources and
19 environmental protection act, 1994 PA 451, MCL 324.11501 to
20 324.11550, shall not be used as a basis for a credit under
21 subsection (2), (3), or (33).

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

27 (a) A listing of the projects under subsection (2) that were

1 approved in the calendar year.

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

4 (31) If, after a taxpayer's project has been approved and the
5 taxpayer has received a preapproval letter but before the project
6 is completed, the taxpayer determines that the project cannot be
7 completed as preapproved, the taxpayer may petition the Michigan
8 economic growth authority to amend the project. The total of
9 eligible investment for the project as amended shall not exceed the
10 amount allowed in the preapproval letter for that project.

11 (32) A project under subsection (2), (3), or (33) may be a
12 multiphase project but, for projects completed before January 1,
13 2006, only if the project is an industrial or manufacturing
14 project. If a project is a multiphase project, when each component
15 of the multiphase project is completed, the taxpayer shall submit
16 documentation that the component is complete, an accounting of the
17 cost of the component, and the eligible investment for the
18 component of each taxpayer eligible for a credit for the project of
19 which the component is a part to the Michigan economic growth
20 authority or the designee of the Michigan economic growth
21 authority, who shall verify that the component is complete. When
22 the completion of the component is verified, a component completion
23 certificate shall be issued to the qualified taxpayer which shall
24 state that the taxpayer is a qualified taxpayer, the credit amount
25 for the component, the qualified taxpayer's federal employer
26 identification number or the Michigan treasury number assigned to
27 the taxpayer, and the project number. The taxpayer may assign all

1 or part of the credit for a multiphase project as provided in this
2 section after a component completion certificate for a component is
3 issued. The qualified taxpayer may transfer ownership of or lease
4 the completed component and assign a proportionate share of the
5 credit for the entire project to the qualified taxpayer that is the
6 new owner or lessee. A multiphase project shall not be divided into
7 more than 20 components. A component is considered to be completed
8 when a certificate of occupancy has been issued by the local
9 municipality in which the project is located for all of the
10 buildings or facilities that comprise the completed component and a
11 component completion certificate is issued. A credit assigned based
12 on a multiphase project shall be claimed by the assignee in the tax
13 year in which the assignment is made. The total of all credits for
14 a multiphase project shall not exceed the amount stated in the
15 preapproval letter for the project under subsection (1). If all
16 components of a multiphase project are not completed by 10 years
17 after the date on which the preapproval letter for the project was
18 issued, the qualified taxpayer that received the preapproval letter
19 for the project shall pay to the state treasurer, as a penalty, an
20 amount equal to the sum of all credits claimed and assigned for all
21 components of the multiphase project and no credits based on that
22 multiphase project shall be claimed after that date by the
23 qualified taxpayer or any assignee of the qualified taxpayer. The
24 penalty under this subsection is subject to interest on the amount
25 of the credit claimed or assigned determined individually for each
26 component at the rate in section 23(2) of 1941 PA 122, MCL 205.23,
27 beginning on the date that the credit for that component was

1 claimed or assigned. As used in this subsection, "proportionate
2 share" means the same percentage of the total of all credits for
3 the project that the qualified investment for the completed
4 component is of the total qualified investment stated in the
5 preapproval letter for the entire project.

6 (33) If the total of all credits for a project is \$200,000.00
7 or less, a qualified taxpayer shall apply to the Michigan economic
8 growth authority for approval of the project under this subsection.
9 An application under this subsection shall state whether the
10 project is a multiphase project. Subject to section 35c, the
11 chairperson of the Michigan economic growth authority or his or her
12 designee is authorized to approve an application or project under
13 this subsection. Only the chairperson of the Michigan economic
14 growth authority is authorized to deny an application or project
15 under this subsection. A project shall be approved or denied not
16 more than 45 days after receipt of the application. If the
17 chairperson of the Michigan economic growth authority or his or her
18 designee does not approve or deny the application within 45 days
19 after the application is received by the Michigan economic growth
20 authority, the application is considered approved as written. If a
21 project is denied under this subsection, a taxpayer is not
22 prohibited from subsequently applying under this subsection for the
23 same project or for another project. The total of all credits for
24 all projects approved under this subsection shall not exceed
25 \$10,000,000.00 in any calendar year. After the first full calendar
26 year after the effective date of the amendatory act that added this
27 subsection, if the authority approves a total of all credits for

1 all projects under this subsection of less than \$10,000,000.00 in a
2 calendar year, the authority may carry forward for 1 year only the
3 difference between \$10,000,000.00 and the total of all credits for
4 all projects under this subsection approved in the immediately
5 preceding calendar year. If the chairperson of the Michigan
6 economic growth authority or his or her designee approves a project
7 under this subsection, the chairperson of the Michigan economic
8 growth authority or his or her designee shall issue a preapproval
9 letter that states that the taxpayer is a qualified taxpayer; the
10 maximum total eligible investment for the project on which credits
11 may be claimed and the maximum total of all credits for the project
12 when the project is completed and a certificate of completion is
13 issued; and the project number assigned by the Michigan economic
14 growth authority. The Michigan economic growth authority shall
15 develop and implement the use of the application form to be used
16 for projects under this subsection. Before the application form is
17 first used and if the Michigan economic growth authority
18 substantially changes the form, the Michigan economic growth
19 authority shall adopt the form or changes by resolution. After 60
20 days after the effective date of the amendatory act that added this
21 subsection and before the Michigan economic growth authority
22 substantially changes the application form, the Michigan economic
23 growth authority shall give notice of the proposed resolution to
24 the secretary of the senate, to the clerk of the house of
25 representatives, and to each person who requested from the Michigan
26 economic growth authority in writing or electronically to be
27 notified regarding proposed resolutions. The notice and proposed

1 resolution and all attachments shall be published on the Michigan
2 economic growth authority's internet website. The Michigan economic
3 growth authority shall hold a public hearing not sooner than 14
4 days and not later than 30 days after the date notice of a proposed
5 resolution is given and offer an opportunity for persons to present
6 data, views, questions, and arguments. The Michigan economic growth
7 authority board members or 1 or more persons designated by the
8 Michigan economic growth authority who have knowledge of the
9 subject matter of the proposed resolution shall be present at the
10 public hearing and shall participate in the discussion of the
11 proposed resolution. The Michigan economic growth authority may act
12 on the proposed resolution no sooner than 14 days after the public
13 hearing. The Michigan economic growth authority shall produce a
14 final decision document that describes the basis for its decision.
15 The final resolution and all attachments and the decision document
16 shall be provided to the secretary of the senate and to the clerk
17 of the house of representatives and shall be published on the
18 Michigan economic growth authority's internet website. The notice
19 shall include all of the following:

20 (a) A copy of the proposed resolution and all attachments.

21 (b) A statement that any person may express any data, views,
22 or arguments regarding the proposed resolution.

23 (c) The address to which written comments may be sent and the
24 date by which comments must be mailed or electronically
25 transmitted, which date shall not be restricted to only before the
26 date of the public hearing.

27 (d) The date, time, and place of the public hearing.

1 (34) If this act is repealed for tax years beginning after
2 December 31, 2007, all of the following apply:

3 (a) Except as otherwise provided in this subsection, a
4 qualified taxpayer that has a preapproval letter issued before
5 January 1, 2007 for a brownfield credit for a project that is
6 completed after the end of the taxpayer's last tax year but before
7 January 1, 2010 or an assignee may claim the brownfield credit
8 amount that could be claimed for the project for 2008 and 2009
9 against the taxpayer's or assignee's tax liability under this act
10 on the taxpayer's or assignee's timely filed original or amended
11 annual return filed under this act for the taxpayer's or assignee's
12 last tax year.

13 (b) Except as otherwise provided in subdivision (e), a credit
14 under this subsection shall be taken after all other credits the
15 taxpayer claims for the tax year under this act and all of the
16 following apply:

17 (i) The brownfield credit amount that the taxpayer or assignee
18 would have been allowed to claim for projects completed in 2008
19 after the end of the taxpayer's or assignee's last tax year or for
20 projects completed in 2009 is in addition to the brownfield credit
21 amount that the taxpayer or assignee is allowed to claim for
22 projects completed before the end of the taxpayer's or assignee's
23 last tax year.

24 (ii) The brownfield credit amount that the taxpayer or assignee
25 is allowed to claim for projects completed in 2008 after the end of
26 the taxpayer's or assignee's last tax year or for projects
27 completed in 2009 on the taxpayer's or assignee's annual return for

1 the taxpayer's or assignee's last tax year or the sum of both
2 brownfield credit amounts shall not exceed the taxpayer's or
3 assignee's tax liability for the taxpayer's or assignee's last tax
4 year after all other credits for that tax year except the
5 taxpayer's or assignee's brownfield credit for the taxpayer's or
6 assignee's last tax year have been taken.

7 (iii) The brownfield credit amount that the taxpayer or assignee
8 is allowed to claim for its last tax year under this subsection
9 shall not exceed the sum of the amount that the taxpayer or
10 assignee would have been allowed to claim for projects completed in
11 2008 after the end of the taxpayer's or assignee's last tax year
12 plus the amount that the taxpayer or assignee would have been
13 allowed to claim for projects completed in 2009.

14 (c) If the amount of the total of all brownfield credit
15 amounts that may be claimed by the taxpayer or assignee under this
16 subsection exceeds the taxpayer's or assignee's tax liability for
17 the taxpayer's or assignee's last tax year, the amount by which the
18 total of all brownfield credit amounts exceeds the taxpayer's or
19 assignee's tax liability for the taxpayer's or assignee's last tax
20 year shall be refunded.

21 (d) A brownfield credit under this subsection shall not be
22 claimed before a certificate of completion is issued for the
23 project on which the brownfield credit is based.

24 (e) The credit allowed under this subsection shall be taken
25 before the credit allowed under section 39c(16).

26 (f) This subsection does not apply to any amount the taxpayer
27 or assignee may claim for the same project for a tax year that

1 begins after December 31, 2007 under any other tax act.

2 (g) As used in this subsection:

3 (i) "Assignee" means an assignee under subsection (17) or (18)
4 or under section 35e.

5 (ii) "Brownfield credit" means the credit allowed under
6 subsections (2), (3), and (33).

7 (iii) "Last tax year" means the taxpayer's tax year under this
8 act that begins after December 31, 2006 and before January 1, 2008.

9 **(35) FOR TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2007, AN**
10 **OTHERWISE QUALIFIED TAXPAYER WHO FAILS TO COMPLY WITH SECTION 3 OF**
11 **THE MICHIGAN CORPORATE RESPONSIBILITY ACT OR WHO FAILS TO DISCLOSE**
12 **A CIVIL OR CRIMINAL OFFENSE AS REQUIRED BY SECTION 3 OF THE**
13 **MICHIGAN CORPORATE RESPONSIBILITY ACT IS NOT ELIGIBLE FOR THE**
14 **CREDIT UNDER THIS SECTION.**

15 **(36) —(35)—** As used in this section:

16 (a) "Annual credit amount" means the maximum amount that a
17 qualified taxpayer is eligible to claim each tax year for a project
18 for which the total of all credits is more than \$10,000,000.00 but
19 \$30,000,000.00 or less, which shall be 10% of the qualified
20 taxpayer's credit amount approved under subsection (3).

21 (b) "Authority" means a brownfield redevelopment authority
22 created under the brownfield redevelopment financing act, 1996 PA
23 381, MCL 125.2651 to 125.2672.

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

1 (d) "Blighted", "brownfield plan", "eligible activities",
2 "eligible property", "facility", "functionally obsolete",
3 "qualified local governmental unit", and "response activity" mean,
4 except as otherwise provided in subdivision (f), those terms as
5 defined in the brownfield redevelopment financing act, 1996 PA 381,
6 MCL 125.2651 to 125.2672.

7 (e) "Eligible investment" means demolition, construction,
8 restoration, alteration, renovation, or improvement of buildings or
9 site improvements on eligible property and the addition of
10 machinery, equipment, and fixtures to eligible property after the
11 date that eligible activities on that eligible property have
12 started pursuant to a brownfield plan under the brownfield
13 redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672,
14 and after the date that the preapproval letter is issued, except
15 that the date that the preapproval letter is issued is not a
16 limitation for 1 project the construction of which began after
17 January 1, 2000 and before January 1, 2001 without the Michigan
18 economic growth authority determining that the project would not
19 occur in this state without the tax credit offered under this
20 section as provided in subsection (7), if the costs of the eligible
21 investment are not otherwise reimbursed to the taxpayer or paid for
22 on behalf of the taxpayer from any source other than the taxpayer.
23 The addition of leased machinery, equipment, or fixtures to
24 eligible property by a lessee of the machinery, equipment, or
25 fixtures is eligible investment if the lease of the machinery,
26 equipment, or fixtures has a minimum term of 10 years or is for the
27 expected useful life of the machinery, equipment, or fixtures, and

1 if the owner of the machinery, equipment, or fixtures is not the
2 qualified taxpayer with regard to that machinery, equipment, or
3 fixtures.

4 (f) "Eligible property" means that term as defined in the
5 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
6 to 125.2672, except that, for purposes of subsection (33), all of
7 the following apply:

8 (i) Eligible property means property identified under a
9 brownfield plan that was used or is currently used for commercial,
10 industrial, or residential purposes and that is 1 of the following:

11 (A) Property for which eligible activities are identified
12 under the brownfield plan, is in a qualified local governmental
13 unit, and is a facility, functionally obsolete, or blighted.

14 (B) Property that is not in a qualified local governmental
15 unit but is within a downtown development district established
16 under 1975 PA 197, MCL 125.1651 to 125.1681, and is functionally
17 obsolete or blighted, and a component of the project on that
18 eligible property is 1 or more of the following:

19 (I) Infrastructure improvements that directly benefit the
20 eligible property.

21 (II) Demolition of structures that is not response activity
22 under section 20101 of the natural resources and environmental
23 protection act, 1994 PA 451, MCL 324.20101.

24 (III) Lead or asbestos abatement.

25 (IV) Site preparation that is not response activity under
26 section 20101 of the natural resources and environmental protection
27 act, 1994 PA 451, MCL 324.20101.

1 (C) Property for which eligible activities are identified
2 under the brownfield plan, is not in a qualified local governmental
3 unit, and is a facility.

4 (ii) Eligible property includes parcels that are adjacent or
5 contiguous to the eligible property if the development of the
6 adjacent or contiguous parcels is estimated to increase the
7 captured taxable value of the property or tax reverted property
8 owned or under the control of a land bank fast track authority
9 pursuant to the land bank fast track authority act, 2003 PA 258,
10 MCL 124.751 to 124.774.

11 (iii) Eligible property includes, to the extent included in the
12 brownfield plan, personal property located on the eligible
13 property.

14 (iv) Eligible property does not include qualified agricultural
15 property exempt under section 7ee of the general property tax act,
16 1893 PA 206, MCL 211.7ee, from the tax levied by a local school
17 district for school operating purposes to the extent provided under
18 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

19 (g) "Eligible taxpayer" means an eligible business that meets
20 the criteria under section 8(5) of the Michigan economic growth
21 authority act, 1995 PA 24, MCL 207.808.

22 (h) "Michigan economic growth authority" means the Michigan
23 economic growth authority created in the Michigan economic growth
24 authority act, 1995 PA 24, MCL 207.801 to 207.810.

25 (i) "Multiphase project" means a project approved under
26 subsection (2), (3), or (33) that has more than 1 component, each
27 of which can be completed separately.

1 (j) "Payroll" and "tax rate" mean those terms as defined in
2 section 37c.

3 (k) "Personal property" means that term as defined in section
4 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
5 that personal property does not include either of the following:

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

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

10 (l) "Project" means the total of all eligible investment on an
11 eligible property or, for purposes of subsection (5)(b), 1 of the
12 following:

13 (i) All eligible investment on property not in a qualified
14 local governmental unit that is a facility.

15 (ii) All eligible investment on property that is not a facility
16 but is functionally obsolete or blighted.

17 (m) "Qualified local governmental unit" means that term as
18 defined in the obsolete property rehabilitation act, 2000 PA 146,
19 MCL 125.2781 to 125.2797.

20 (n) "Qualified taxpayer" means a taxpayer that meets both of
21 the following criteria:

22 (i) Owns or leases eligible property.

23 (ii) Certifies that, except as otherwise provided in this
24 subparagraph, the department of environmental quality has not sued
25 or issued a unilateral order to the taxpayer pursuant to part 201
26 of the natural resources and environmental protection act, 1994 PA
27 451, MCL 324.20101 to 324.20142, to compel response activity on or

1 to the eligible property, or expended any state funds for response
2 activity on or to the eligible property and demanded reimbursement
3 for those expenditures from the qualified taxpayer. However, if the
4 taxpayer has completed all response activity required by part 201
5 of the natural resources and environmental protection act, 1994 PA
6 451, MCL 324.20101 to 324.20142, is in compliance with any deed
7 restriction or administrative or judicial order related to the
8 required response activity, and has reimbursed the state for all
9 costs incurred by the state related to the required response
10 activity, the taxpayer meets the criteria under this subparagraph.

11 (o) "Tax liability attributable to authorized business
12 activity" means the tax liability imposed by this act after the
13 calculation of credits provided in sections 36, 37, and 39.