

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 982

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 437 (MCL 208.1437), as amended by 2008 PA 89.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 437. (1) Subject to the criteria under this section, a
2 qualified taxpayer that has unused credits or has a preapproval
3 letter issued after December 31, 2007 and before January 1, 2013,
4 or a taxpayer that received a preapproval letter prior to January
5 1, 2008 under section 38g of former 1975 PA 228 and has not
6 received a certificate of completion prior to the taxpayer's last
7 tax year, provided that the project is completed not more than 5
8 years after the preapproval letter for the project is issued unless
9 extended under subsection (9) or if it is a multiphase project not

1 more than 10 years after the preapproval letter, as amended, if
2 applicable, for the project is issued, or an assignee under
3 subsection (20), (21), or (22) may claim a credit that has been
4 approved under section 38g of former 1975 PA 228 or under
5 subsection (2), (3), or (4) against the tax imposed by this act
6 equal to either of the following:

7 (a) For projects approved before ~~the effective date of the~~
8 ~~amendatory act that added subsection (33)~~ **APRIL 8, 2008**, if the
9 total of all credits for a project is \$1,000,000.00 or less, 10% of
10 the cost of the qualified taxpayer's eligible investment paid or
11 accrued by the qualified taxpayer on an eligible property provided
12 that the project does not exceed the amount stated in the
13 preapproval letter, as amended. For projects approved, **OR AMENDED**,
14 on and after ~~the effective date of the amendatory act that added~~
15 ~~subsection (33)~~ **APRIL 8, 2008**, if the total of all eligible
16 investments for a project are \$10,000,000.00 or less, up to 12.5%
17 of the costs of the qualified taxpayer's eligible investment paid
18 or accrued by the qualified taxpayer on an eligible property or up
19 to 15% of the costs of the qualified taxpayer's eligible investment
20 paid or accrued by the qualified taxpayer on an eligible property
21 if the project is designated as an urban development area project
22 by the Michigan economic growth authority to the extent that the
23 project does not exceed the amount stated in the preapproval
24 letter, as amended, or, until December 31, 2010, up to 20% of the
25 costs of the qualified taxpayer's eligible investment paid or
26 accrued by the qualified taxpayer on an eligible property if the
27 project is designated as an urban development area project by the

1 Michigan economic growth authority. If eligible investment exceeds
2 the amount of eligible investment in the preapproval letter, as
3 amended, for that project, the total of all credits for the project
4 shall not exceed the total of all credits on the certificate of
5 completion.

6 (b) For projects approved before ~~the effective date of the~~
7 ~~amendatory act that added subsection (33)~~ **APRIL 8, 2008**, if the
8 total of all credits for a project is more than \$1,000,000.00 but
9 \$30,000,000.00 or less and, except as provided in subsection
10 (6)(b), the project is located in a qualified local governmental
11 unit, a percentage as determined by the Michigan economic growth
12 authority not to exceed 10% of the cost of the qualified taxpayer's
13 eligible investment as determined under subsection (11) paid or
14 accrued by the qualified taxpayer on an eligible property. For
15 projects approved, **OR AMENDED**, on and after ~~the effective date of~~
16 ~~the amendatory act that added subsection (33)~~ **APRIL 8, 2008**, if the
17 total of all eligible investments for a project is more than
18 \$10,000,000.00 but \$300,000,000.00 or less, up to 12.5% of the
19 costs of the qualified taxpayer's eligible investment as determined
20 under subsection (11) paid or accrued by the qualified taxpayer on
21 an eligible property that, except as provided in subsection (6)(b),
22 is located in a qualified local governmental unit, up to 15% of the
23 cost of the qualified taxpayer's eligible investment as determined
24 under subsection (11) paid or accrued by the qualified taxpayer on
25 an eligible property if the project is designated as an urban
26 development area project by the Michigan economic growth authority,
27 or, until December 31, 2010, up to 20% of the costs of the

1 qualified taxpayer's eligible investment as determined under
2 subsection (11) paid or accrued by the qualified taxpayer on an
3 eligible property if the project is designated as an urban
4 development area project by the Michigan economic growth authority.
5 If eligible investment exceeds the amount of eligible investment in
6 the preapproval letter, as amended, for that project, the total of
7 all credits for the project shall not exceed the total of all
8 credits on the certificate of completion.

9 (2) If the cost of a project will be \$2,000,000.00 or less, a
10 qualified taxpayer shall apply to the Michigan economic growth
11 authority for approval of the project under this subsection. An
12 application under this subsection shall state whether the project
13 is a multiphase project. Subject to the limitation provided under
14 subsection (31), the chairperson of the Michigan economic growth
15 authority or his or her designee is authorized to approve an
16 application or project under this subsection. Only the chairperson
17 of the Michigan economic growth authority is authorized to deny an
18 application or project under this subsection. A project shall be
19 approved or denied not more than 45 days after receipt of the
20 application. If the chairperson of the Michigan economic growth
21 authority or his or her designee does not approve or deny the
22 application within 45 days after the application is received by the
23 Michigan economic growth authority, the application is considered
24 approved as written. If the chairperson of the Michigan economic
25 growth authority or his or her designee approves a project under
26 this subsection, the chairperson of the Michigan economic growth
27 authority or his or her designee shall issue a preapproval letter

1 that states that the taxpayer is a qualified taxpayer; the maximum
2 total eligible investment for the project on which credits may be
3 claimed and the maximum total of all credits for the project when
4 the project is completed and a certificate of completion is issued;
5 and the project number assigned by the Michigan economic growth
6 authority. If a project is denied under this subsection, a taxpayer
7 is not prohibited from subsequently applying under this subsection
8 for the same project or for another project. The Michigan economic
9 growth authority shall develop and implement the use of the
10 application form to be used for projects under this subsection.

11 (3) If the cost of a project will be for more than
12 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer
13 shall apply to the Michigan economic growth authority for approval
14 of the project under this subsection. An application under this
15 subsection shall state whether the project is a multiphase project.
16 Subject to the limitation provided under subsection (31), the
17 chairperson of the Michigan economic growth authority or his or her
18 designee is authorized to approve an application or project under
19 this subsection. Only the chairperson of the Michigan economic
20 growth authority is authorized to deny an application or project
21 under this subsection. A project shall be approved or denied not
22 more than 45 days after receipt of the application. If the
23 chairperson of the Michigan economic growth authority or his or her
24 designee does not approve or deny an application within 45 days
25 after the application is received by the Michigan economic growth
26 authority, the application is considered approved as written. The
27 criteria in subsection (7) shall be used when approving projects

1 under this subsection. When approving projects under this
2 subsection, priority shall be given to projects on a facility. The
3 total of all credits for an approved project under this subsection
4 shall not exceed the amounts authorized under subsection (1)(a). A
5 taxpayer may apply under this subsection instead of subsection (4)
6 for approval of a project that will be for more than
7 \$10,000,000.00, but the total of all credits for that project shall
8 not exceed the amounts authorized under subsection (1)(a). If the
9 chairperson of the Michigan economic growth authority or his or her
10 designee approves a project under this subsection, the chairperson
11 of the Michigan economic growth authority or his or her designee
12 shall issue a preapproval letter that states that the taxpayer is a
13 qualified taxpayer; the maximum total eligible investment for the
14 project on which credits may be claimed and the maximum total of
15 all credits for the project when the project is completed and a
16 certificate of completion is issued; and the project number
17 assigned by the Michigan economic growth authority. If a project is
18 denied under this subsection, a taxpayer is not prohibited from
19 subsequently applying under this subsection or subsection (4) for
20 the same project or for another project.

21 (4) If the cost of a project will be for more than
22 \$10,000,000.00 and, except as provided in subsection (6)(b), the
23 project is located in a qualified local governmental unit, a
24 qualified taxpayer shall apply to the Michigan economic growth
25 authority for approval of the project. An application under this
26 subsection shall state whether the project is a multiphase project.
27 The Michigan economic growth authority shall approve or deny the

1 project not more than 65 days after receipt of the application. A
2 project under this subsection shall not be approved without the
3 concurrence of the state treasurer. If the Michigan economic growth
4 authority does not approve or deny the application within 65 days
5 after it receives the application, the Michigan economic growth
6 authority shall send the application to the state treasurer. The
7 state treasurer shall approve or deny the application within 5 days
8 after receipt of the application. If the state treasurer does not
9 deny the application within 5 days after receipt of the
10 application, the application is considered approved. The Michigan
11 economic growth authority shall approve a limited number of
12 projects under this subsection during each calendar year as
13 provided in subsection (6). The Michigan economic growth authority
14 shall use the criteria in subsection (7) when approving projects
15 under this subsection, when determining the total amount of
16 eligible investment, and when determining the percentage of
17 eligible investment for the project to be used to calculate a
18 credit. The total of all credits for an approved project under this
19 subsection shall not exceed the amount designated in the
20 preapproval letter, as amended, for that project. If the Michigan
21 economic growth authority approves a project under this subsection,
22 the Michigan economic growth authority shall issue a preapproval
23 letter that states that the taxpayer is a qualified taxpayer; the
24 percentage of eligible investment for the project determined by the
25 Michigan economic growth authority for purposes of subsection
26 (1)(b); the maximum total eligible investment for the project on
27 which credits may be claimed and the maximum total of all credits

1 for the project when the project is completed and a certificate of
2 completion is issued; and the project number assigned by the
3 Michigan economic growth authority. The Michigan economic growth
4 authority shall send a copy of the preapproval letter to the
5 department. If a project is denied under this subsection, a
6 taxpayer is not prohibited from subsequently applying under this
7 subsection or subsection (3) for the same project or for another
8 project.

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

14 (6) The Michigan economic growth authority may approve not
15 more than 20 projects each calendar year under subsection (4), and
16 the following limitations apply:

17 (a) Of the 20 projects allowed under this subsection, the
18 total of all credits for each project may be more than
19 \$10,000,000.00 but \$30,000,000.00 or less for only 1 project.

20 (b) Of the 20 projects allowed under this subsection, up to 3
21 projects may be approved for projects that are not in a qualified
22 local governmental unit if the property is a facility for which
23 eligible activities are identified in a brownfield plan or, for 1
24 of the 3 projects, if the property is not a facility but is
25 functionally obsolete or blighted, property identified in a
26 brownfield plan. For purposes of this subdivision, a facility
27 includes a building or complex of buildings that was used by a

1 state or federal agency and that is no longer being used for the
2 purpose for which it was used by the state or federal agency.

3 (c) The project allowed under subdivision (a) may also qualify
4 under subdivision (b).

5 (7) The Michigan economic growth authority shall review all
6 applications for projects under subsection (4) and, if an
7 application is approved, shall determine the maximum total of all
8 credits for that project. Before approving a project for which the
9 total of all credits will be more than \$10,000,000.00 but
10 \$30,000,000.00 or less only, the Michigan economic growth authority
11 shall determine that the project would not occur in this state
12 without the tax credit offered under subsection (4). The Michigan
13 economic growth authority shall consider the following criteria to
14 the extent reasonably applicable to the type of project proposed
15 when approving a project under subsection (4), and the chairperson
16 of the Michigan economic growth authority or his or her designee
17 shall consider the following criteria to the extent reasonably
18 applicable to the type of project proposed when approving a project
19 under subsection (2) or (3) or when considering an amendment to a
20 project under subsection (9):

21 (a) The overall benefit to the public.

22 (b) The extent of reuse of vacant buildings and redevelopment
23 of blighted property.

24 (c) Creation of jobs.

25 (d) Whether the eligible property is in an area of high
26 unemployment.

27 (e) The level and extent of contamination alleviated by the

1 qualified taxpayer's eligible activities to the extent known to the
2 qualified taxpayer.

3 (f) The level of private sector contribution.

4 (g) The cost gap that exists between the site and a similar
5 greenfield site as determined by the Michigan economic growth
6 authority.

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

9 (i) Whether the project is financially and economically sound.

10 (j) Any other criteria that the Michigan economic growth
11 authority or the chairperson of the Michigan economic growth
12 authority, as applicable, considers appropriate for the
13 determination of eligibility under subsection (3) or (4).

14 (8) A qualified taxpayer may apply for projects under this
15 section for eligible investment on more than 1 eligible property in
16 a tax year. Each project approved and each project for which a
17 certificate of completion is issued under this section shall be for
18 eligible investment on 1 eligible property.

19 (9) If, after a taxpayer's project has been approved and the
20 taxpayer has received a preapproval letter but before the taxpayer
21 has made an eligible investment, other than soft costs, at the
22 property, the taxpayer determines that the project cannot be
23 completed as preapproved, the taxpayer may petition the Michigan
24 economic growth authority to amend the project and the preapproval
25 letter to increase the maximum total eligible investment for the
26 project on which credits may be claimed and the maximum total of
27 all credits for the project. A taxpayer may petition the Michigan

1 economic growth authority to make any other amendments to the
2 project or preapproval letter at any time before a certificate of
3 completion is issued. Amendments to the project or preapproval
4 letter may include, but are not limited to, extending the duration
5 of time provided to complete the project, as long as that extension
6 does not exceed 10 years from the date of the preapproval letter.

7 (10) A project may be a multiphase project. If a project is a
8 multiphase project, when each component of the multiphase project
9 is completed, the taxpayer shall submit documentation that the
10 component is complete, an accounting of the cost of the component,
11 and the eligible investment for the component of each taxpayer
12 eligible for a credit for the project of which the component is a
13 part to the Michigan economic growth authority or the designee of
14 the Michigan economic growth authority, who shall verify that the
15 component is complete. When the completion of the component is
16 verified, a component completion certificate shall be issued to the
17 qualified taxpayer which shall state that the taxpayer is a
18 qualified taxpayer, the credit amount for the component, the
19 qualified taxpayer's federal employer identification number or the
20 Michigan treasury number assigned to the taxpayer, and the project
21 number. The taxpayer may assign all or part of the credit for a
22 multiphase project as provided in this section after a component
23 completion certificate for a component is issued. The qualified
24 taxpayer may transfer ownership of or lease the completed component
25 and assign a proportionate share of the credit for the entire
26 project to the qualified taxpayer that is the new owner or lessee.
27 A multiphase project shall not be divided into more than 10

1 components. A component is considered to be completed when a
2 certificate of occupancy has been issued by the local municipality
3 in which the project is located for all of the buildings or
4 facilities that comprise the completed component and a component
5 completion certificate is issued or the chairperson of the Michigan
6 economic growth authority or his or her designee, for projects
7 approved under subsection (2) or (3), or the Michigan economic
8 growth authority, for projects approved under subsection (4),
9 verifies that the component is complete. A credit assigned based on
10 a multiphase project shall be claimed by the assignee in the tax
11 year in which the assignment is made. The total of all credits for
12 a multiphase project shall not exceed the amount stated in the
13 preapproval letter, as amended, for the project under subsection
14 (1). If all components of a multiphase project are not completed by
15 10 years after the date on which the preapproval letter, as
16 amended, if applicable, for the project was issued, the qualified
17 taxpayer that received the preapproval letter for the project shall
18 pay to the state treasurer, as a penalty, an amount equal to the
19 sum of all credits claimed and assigned for all components of the
20 multiphase project and no credits based on that multiphase project
21 shall be claimed after that date by the qualified taxpayer or any
22 assignee of the qualified taxpayer. The penalty under this
23 subsection is subject to interest on the amount of the credit
24 claimed or assigned determined individually for each component at
25 the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on
26 the date that the credit for that component was claimed or
27 assigned. As used in this subsection, "proportionate share" means

1 the same percentage of the total of all credits for the project
2 that the qualified investment for the completed component is of the
3 total qualified investment stated in the preapproval letter, as
4 amended, for the entire project.

5 (11) When a project under this section is completed, the
6 taxpayer shall submit documentation that the project is completed,
7 an accounting of the cost of the project, the eligible investment
8 of each taxpayer if there is more than 1 taxpayer eligible for a
9 credit for the project, and, if the taxpayer is not the owner or
10 lessee of the eligible property on which the eligible investment
11 was made at the time the project is completed, that the taxpayer
12 was the owner or lessee of, or was a party to an agreement to
13 purchase or lease, that eligible property when all eligible
14 investment of the taxpayer was made. The chairperson of the
15 Michigan economic growth authority or his or her designee, for
16 projects approved under subsection (2) or (3), or the Michigan
17 economic growth authority, for projects approved under subsection
18 (4), shall verify that the project is completed. The Michigan
19 economic growth authority shall conduct an on-site inspection as
20 part of the verification process for projects approved under
21 subsection (4). When the completion of the project is verified, a
22 certificate of completion shall be issued to each qualified
23 taxpayer that has made eligible investment on that eligible
24 property. The certificate of completion shall state the total
25 amount of all credits for the project and that total shall not
26 exceed the maximum total of all credits listed in the preapproval
27 letter for the project under subsection (2), (3), or (4) as

1 applicable and as amended under subsection (9) and shall state all
2 of the following:

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

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

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

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

9 (e) The project number.

10 (f) For a project approved under subsection (4) for which the
11 total of all credits is more than \$10,000,000.00 but \$30,000,000.00
12 or less, the total of all credits and the schedule on which the
13 annual credit amount shall be claimed by the qualified taxpayer.

14 (g) For a multiphase project under subsection (10), the amount
15 of each credit assigned and the amount of all credits claimed in
16 each tax year before the year in which the project is completed.

17 (12) Except as otherwise provided in this section, qualified
18 taxpayers shall claim credits under this section in the tax year in
19 which the certificate of completion is issued. For a project
20 approved under subsection (4) for which the total of all credits is
21 more than \$10,000,000.00 but \$30,000,000.00 or less, the qualified
22 taxpayer shall claim 10% of its approved credit each year for 10
23 years. A credit assigned based on a multiphase project shall be
24 claimed in the year in which the credit is assigned.

25 (13) The cost of eligible investment for leased machinery,
26 equipment, or fixtures is the cost of that property had the
27 property been purchased minus the lessor's estimate, made at the

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

7 (14) Credits claimed by a lessee of eligible property are
8 subject to the total of all credits limitation under this section.

9 (15) Each qualified taxpayer and assignee under subsection
10 (20), (21), or (22) that claims a credit under this section shall
11 attach a copy of the certificate of completion and, if the credit
12 was assigned, a copy of the assignment form provided for under this
13 section to the annual return filed under this act on which the
14 credit under this section is claimed. An assignee of a credit based
15 on a multiphase project shall attach a copy of the assignment form
16 provided for under this section and the component completion
17 certificate provided for in subsection (10) to the annual return
18 filed under this act on which the credit is claimed but is not
19 required to file a copy of a certificate of completion.

20 (16) Except as otherwise provided in this subsection or
21 subsection (10), (18), (20), (21), or (22), a credit under this
22 section shall be claimed in the tax year in which the certificate
23 of completion is issued to the qualified taxpayer. For a project
24 described in subsection (11)(f) for which a schedule for claiming
25 annual credit amounts is designated on the certificate of
26 completion by the Michigan economic growth authority, the annual
27 credit amount shall be claimed in the tax year specified on the

1 certificate of completion.

2 (17) Except as otherwise provided under this subsection, the
3 credits approved under this section shall be calculated after
4 application of all other credits allowed under this act. The
5 credits under this section shall be calculated before the
6 calculation of the credits under sections 413, 423, 431, and 450.

7 (18) Except as otherwise provided under this subsection, if
8 the credit allowed under this section for the tax year and any
9 unused carryforward of the credit allowed under this section exceed
10 the qualified taxpayer's or assignee's tax liability for the tax
11 year, that portion that exceeds the tax liability for the tax year
12 shall not be refunded but may be carried forward to offset tax
13 liability in subsequent tax years for 10 years or until used up,
14 whichever occurs first. Except as otherwise provided in this
15 subsection, the maximum time allowed under the carryforward
16 provisions under this subsection begins with the tax year in which
17 the certificate of completion is issued to the qualified taxpayer.
18 If the qualified taxpayer assigns all or any portion of its credit
19 approved under this section, the maximum time allowed under the
20 carryforward provisions for an assignee begins to run with the tax
21 year in which the assignment is made and the assignee first claims
22 a credit, which shall be the same tax year. The maximum time
23 allowed under the carryforward provisions for an annual credit
24 amount for a credit allowed under subsection (4) begins to run in
25 the tax year for which the annual credit amount is designated on
26 the certificate of completion issued under this section. A credit
27 carryforward available under section 38g of former 1975 PA 228 that

1 is unused at the end of the last tax year may be claimed against
2 the tax imposed under act for the years the carryforward would have
3 been available under former 1975 PA 228. Beginning on and after ~~the~~
4 ~~effective date of the amendatory act that added subsection (33)~~
5 **APRIL 8, 2008**, if the credit allowed under this section for the tax
6 year exceeds the qualified taxpayer's tax liability for the tax
7 year, the qualified taxpayer may elect to have the excess refunded
8 at a rate equal to 85% of that portion of the credit that exceeds
9 the tax liability of the qualified taxpayer for the tax year and
10 forgo the remaining 15% of the credit and any carryforward.

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

27 (20) For credits under this section for projects for which a

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

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

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

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

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

27 (d) The qualified taxpayer shall not assign more than the

1 annual credit amount for each tax year.

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

1 send a copy of the completed assignment form to the Michigan
2 economic growth authority in the tax year in which the assignment
3 is made. A partner, member, or shareholder who is an assignee shall
4 attach a copy of the completed assignment form to its annual return
5 required under this act, for the tax year in which the assignment
6 is made and the assignee first claims a credit, which shall be the
7 same tax year. A credit assignment based on a credit for a
8 component of a multiphase project that is completed before January
9 1, 2006 shall be made under this subsection. In addition to all
10 other procedures under this subsection, the following apply if the
11 total of all credits for a project is more than \$10,000,000.00 but
12 \$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 (22) For projects approved under this section or section 38g
24 of former 1975 PA 228 for which a certificate of completion is
25 issued on and after January 1, 2006, a qualified taxpayer may
26 assign all or a portion of a credit allowed under this section or
27 section 38g(2), (3), or (33) of former 1975 PA 228 under this

1 subsection. A credit assignment under this subsection is
2 irrevocable and, except for a credit assignment based on a
3 multiphase project, shall be made in the tax year in which a
4 certificate of completion is issued unless the assignee is an
5 unknown lessee. If a qualified taxpayer wishes to assign all or a
6 portion of its credit to a lessee but the lessee is unknown in the
7 tax year in which the certificate of completion is issued, the
8 qualified taxpayer may delay claiming and assigning the credit
9 until the first tax year in which the lessee is known. A qualified
10 taxpayer may claim a portion of a credit and assign the remaining
11 credit amount. If the qualified taxpayer both claims and assigns
12 portions of the credit, the qualified taxpayer shall claim the
13 portion it claims in the tax year in which a certificate of
14 completion is issued pursuant to this section or section 38g of
15 former 1975 PA 228. An assignee may subsequently assign a credit or
16 any portion of a credit assigned under this subsection to 1 or more
17 assignees. The credit assignment or a subsequent reassignment under
18 this subsection shall be made on a form prescribed by the Michigan
19 economic growth authority. The Michigan economic growth authority
20 or its designee shall review and issue a completed assignment or
21 reassignment certificate to the assignee or reassignee. An assignee
22 or subsequent reassignee shall attach a copy of the completed
23 assignment certificate to its annual return required under this
24 act, for the tax year in which the assignment or reassignment is
25 made and the assignee or reassignee first claims a credit, which
26 shall be the same tax year. A credit assignment based on a credit
27 for a component of a multiphase project that is completed before

1 January 1, 2006 shall be made under section 38g(18) of former 1975
2 PA 228. A credit assignment based on a credit for a component of a
3 multiphase project that is completed on or after January 1, 2006
4 may be made under this section. In addition to all other procedures
5 and requirements under this section, the following apply if the
6 total of all credits for a project is more than \$10,000,000.00 but
7 \$30,000,000.00 or less:

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

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

13 (c) More than 1 annual credit amount may be assigned to any 1
14 assignee, and the qualified taxpayer may assign all or a portion of
15 each annual credit amount to any assignee.

16 (23) A qualified taxpayer or assignee under subsection (20),
17 (21), or (22) shall not claim a credit under subsection (1)(a) or
18 (b) based on eligible investment on which a credit claimed under
19 section 38d of former 1975 PA 228 was based.

20 (24) When reviewing an application for a project for
21 designation as an urban development area project, the Michigan
22 economic growth authority for projects approved under subsection
23 (4) or the chairperson of the Michigan economic growth authority or
24 his or her designee for projects approved under subsections (2) and
25 (3) shall consider all of the following criteria:

26 (a) If the project increases the density of the area by
27 promoting multistory development.

1 (b) If the project promotes mixed-use development and walkable
2 communities.

3 (c) If the project promotes sustainable redevelopment.

4 (d) If the project addresses areawide redevelopment and
5 includes multiple parcels of property.

6 (e) If the project addresses underserved markets of commerce.

7 (f) Any other criteria determined by the Michigan economic
8 growth authority or the chairperson of the Michigan economic growth
9 authority.

10 (25) An eligible taxpayer that claims a credit under this
11 section is not prohibited from claiming a credit under section 431.
12 However, the eligible taxpayer shall not claim a credit under this
13 section and section 431 based on the same costs.

14 (26) Eligible investment attributable or related to the
15 operation of a professional sports stadium, and eligible investment
16 that is associated or affiliated with the operation of a
17 professional sports stadium, including, but not limited to, the
18 operation of a parking lot or retail store, shall not be used as a
19 basis for a credit under this section. Professional sports stadium
20 does not include a professional sports stadium that will no longer
21 be used by a professional sports team on and after the date that an
22 application related to that professional sports stadium is filed
23 under this section.

24 (27) Eligible investment attributable or related to the
25 operation of a casino, and eligible investment that is associated
26 or affiliated with the operation of a casino, including, but not
27 limited to, the operation of a parking lot, hotel, motel, or retail

1 store, shall not be used as a basis for a credit under this
2 section. As used in this subsection, "casino" means a casino
3 regulated by this state pursuant to the Michigan gaming control and
4 revenue act, 1996 IL 1, MCL 432.201 to 432.226.

5 (28) Eligible investment attributable or related to the
6 construction of a new landfill or the expansion of an existing
7 landfill regulated under part 115 of the natural resources and
8 environmental protection act, 1994 PA 451, MCL 324.11501 to
9 324.11550, shall not be used as a basis for a credit under this
10 section.

11 (29) The Michigan economic growth authority annually shall
12 prepare and submit to the house of representatives and senate
13 committees responsible for tax policy and economic development
14 issues a report on the credits under subsections (2), (3), and (4).
15 The report shall include, but is not limited to, all of the
16 following:

17 (a) A listing of the projects under subsections (2), (3), and
18 (4) that were approved in the calendar year.

19 (b) The total amount of eligible investment for projects
20 approved under subsections (2), (3), and (4) in the calendar year.

21 (30) For purposes of this section, taxpayer includes a person
22 subject to the tax imposed under chapters 2A and 2B.

23 (31) For the 2008 calendar year, the total of all credits for
24 all projects approved under subsection (2) or (3) shall not exceed
25 \$63,000,000.00. For each calendar year after 2008, the total of all
26 credits for all projects approved under subsection (2) or (3) shall
27 not exceed \$40,000,000.00. If the Michigan economic growth

1 authority approves a total of all credits for all projects under
2 subsection (2) or (3) of less than \$40,000,000.00 in a calendar
3 year, the Michigan economic growth authority may carry forward for
4 1 year only the difference between \$40,000,000.00 and the total of
5 all credits for all projects under this subsection approved in the
6 immediately preceding calendar year.

7 (32) As used in this section:

8 (a) "Annual credit amount" means the maximum amount that a
9 qualified taxpayer is eligible to claim each tax year for a project
10 for which the total of all credits is more than \$10,000,000.00 but
11 \$30,000,000.00 or less, as approved under subsection (4).

12 (b) "Authority" means a brownfield redevelopment authority
13 created under the brownfield redevelopment financing act, 1996 PA
14 381, MCL 125.2651 to 125.2672.

15 (c) "Blighted", "brownfield plan", "eligible activities",
16 "facility", "functionally obsolete", "qualified local governmental
17 unit", and "response activity" mean those terms as defined in the
18 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
19 to 125.2672.

20 (d) "Eligible investment" or "eligible investments" means,
21 when made after the approval date of the brownfield plan but in any
22 event no earlier than 90 days prior to the date of the preapproval
23 letter, any demolition, construction, restoration, alteration,
24 renovation, or improvement of buildings or site improvements on
25 eligible property and the addition of machinery, equipment, and
26 fixtures to eligible property after the date that eligible
27 activities on that eligible property have started pursuant to a

1 brownfield plan under the brownfield redevelopment financing act,
2 1996 PA 381, MCL 125.2651 to 125.2672, 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. For projects approved after ~~the effective date of the~~
13 ~~amendatory act that added subsection (33)~~ **APRIL 8, 2008**, eligible
14 investment does not include certain soft costs of the eligible
15 investment as determined by the Michigan economic growth authority,
16 including, but not limited to, developer fees, appraisals,
17 performance bonds, closing costs, bank fees, loan fees, risk
18 contingencies, financing costs, permanent or construction period
19 interest, legal expenses, leasing or sales commissions, marketing
20 costs, professional fees, shared savings, taxes, title insurance,
21 bank inspection fees, insurance, and project management fees.
22 Notwithstanding the foregoing, eligible investment does include
23 architectural, engineering, surveying, and similar professional
24 fees.

25 (e) "Eligible property", except as otherwise provided under
26 subsection (33), means property for which eligible activities are
27 identified under a brownfield plan that was used or is currently

1 used for commercial, industrial, public, or residential purposes,
2 including personal property located on the property, to the extent
3 included in the brownfield plan, and that is 1 or more of the
4 following:

5 (i) Is in a qualified local governmental unit and is a
6 facility, functionally obsolete, or blighted and includes parcels
7 that are adjacent or contiguous to that property if the development
8 of the adjacent and contiguous parcels is estimated to increase the
9 captured taxable value of that property.

10 (ii) Is not in a qualified local governmental unit and is a
11 facility, and includes parcels that are adjacent or contiguous to
12 that property if the development of the adjacent and contiguous
13 parcels is estimated to increase the captured taxable value of that
14 property.

15 (iii) Is tax reverted property owned or under the control of a
16 land bank fast track authority.

17 (f) "Last tax year" means the taxpayer's tax year under former
18 1975 PA 228 that begins after December 31, 2006 and before January
19 1, 2008.

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

23 (h) "Multiphase project" means a project approved under this
24 section that has more than 1 component, each of which can be
25 completed separately.

26 (i) "Personal property" means that term as defined in section
27 8 of the general property tax act, 1893 PA 206, MCL 211.8, except

1 that personal property does not include either of the following:

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

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

6 (j) "Project" means the total of all eligible investment on an
7 eligible property or, for purposes of subsection (6)(b), 1 of the
8 following:

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

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

13 (k) "Qualified local governmental unit" means that term as
14 defined in the obsolete property rehabilitation act, 2000 PA 146,
15 MCL 125.2781 to 125.2797.

16 (l) "Qualified taxpayer" means a taxpayer that meets both of
17 the following criteria:

18 (i) Owns, leases, or has entered into an agreement to purchase
19 or lease eligible property.

20 (ii) Certifies that, except as otherwise provided in this
21 subparagraph, the department of environmental quality has not sued
22 or issued a unilateral order to the taxpayer pursuant to part 201
23 of the natural resources and environmental protection act, 1994 PA
24 451, MCL 324.20101 to 324.20142, to compel response activity on or
25 to the eligible property, or expended any state funds for response
26 activity on or to the eligible property and demanded reimbursement
27 for those expenditures from the qualified taxpayer. However, if the

1 taxpayer has completed all response activity required by part 201
2 of the natural resources and environmental protection act, 1994 PA
3 451, MCL 324.20101 to 324.20142, is in compliance with any deed
4 restriction or administrative or judicial order related to the
5 required response activity, and has reimbursed the state for all
6 costs incurred by the state related to the required response
7 activity, the taxpayer meets the criteria under this subparagraph.

8 (m) "Urban development area project" means a project located
9 on eligible property in the downtown or traditional central
10 business district of a qualified local governmental unit or county
11 seat or along a traditional commercial corridor of a qualified
12 local governmental unit or county seat as determined by the
13 Michigan economic growth authority or the chairperson of the
14 Michigan economic growth authority or his or her designee.

15 (33) For purposes of subsection (2), eligible property means
16 that term as defined under subsection (32)(e) except that all of
17 the following apply:

18 (a) Eligible property means property identified under a
19 brownfield plan that was used or is currently used for commercial,
20 industrial, public, or residential purposes and that is 1 of the
21 following:

22 (i) Property for which eligible activities are identified under
23 the brownfield plan, is in a qualified local governmental unit, and
24 is a facility, functionally obsolete, or blighted.

25 (ii) Property that is not in a qualified local governmental
26 unit but is within a downtown development district established
27 under 1975 PA 197, MCL 125.1651 to 125.1681, and is functionally

1 obsolete or blighted, and a component of the project on that
2 eligible property is 1 or more of the following:

3 (A) Infrastructure improvements that directly benefit the
4 eligible property.

5 (B) Demolition of structures that is not response activity
6 under section 20101 of the natural resources and environmental
7 protection act, 1994 PA 451, MCL 324.20101.

8 (C) Lead or asbestos abatement.

9 (D) Site preparation that is not response activity under
10 section 20101 of the natural resources and environmental protection
11 act, 1994 PA 451, MCL 324.20101.

12 (iii) Property for which eligible activities are identified
13 under the brownfield plan, is not in a qualified local governmental
14 unit, and is a facility.

15 (b) Eligible property includes parcels that are adjacent or
16 contiguous to the eligible property if the development of the
17 adjacent or contiguous parcels is estimated to increase the
18 captured taxable value of the property or tax reverted property
19 owned or under the control of a land bank fast track authority
20 pursuant to the land bank fast track ~~authority~~ act, 2003 PA 258,
21 MCL 124.751 to 124.774.

22 (c) Eligible property includes, to the extent included in the
23 brownfield plan, personal property located on the eligible
24 property.

25 (d) Eligible property does not include qualified agricultural
26 property exempt under section 7ee of the general property tax act,
27 1893 PA 206, MCL 211.7ee, from the tax levied by a local school

1 district for school operating purposes to the extent provided under
2 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.