

HOUSE BILL No. 6430

September 10, 2008, Introduced by Reps. Bieda, Robert Jones, Hood, Sak, Constan, Condino, Ward, Meltzer, Tobocman, Bauer and Rocca and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
(MCL 206.1 to 206.532) by adding section 279.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 279. (1) SUBJECT TO THE LIMITATION PROVIDED UNDER
2 SUBSECTION (7), FOR THE 2010 TAX YEAR AND EACH TAX YEAR THEREAFTER,
3 A QUALIFIED TAXPAYER THAT HOLDS A QUALIFIED EQUITY INVESTMENT ON A
4 CREDIT ALLOWANCE DATE OF THAT QUALIFIED EQUITY INVESTMENT EARNS A
5 VESTED RIGHT TO AND MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY
6 THIS ACT, THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101
7 TO 208.1601, OR SECTION 476A OF THE INSURANCE CODE OF 1956, 1956 PA
8 218, MCL 500.476A, EQUAL TO THE APPLICABLE PERCENTAGE OF THE
9 PURCHASE PRICE PAID TO THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY

1 FOR THE QUALIFIED EQUITY INVESTMENT. THE CREDIT ALLOWED UNDER THIS
2 SECTION SHALL NOT EXCEED THE TAX LIABILITY OF THE TAXPAYER FOR THE
3 TAX YEAR. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SECTION
4 AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED BY THIS SECTION
5 EXCEED THE TAX LIABILITY OF THE QUALIFIED TAXPAYER FOR THE TAX
6 YEAR, THAT PORTION THAT EXCEEDS THE TAX LIABILITY SHALL NOT BE
7 REFUNDED OR TRANSFERRED, EXCEPT AS PROVIDED IN SUBSECTION (4), BUT
8 MAY BE CARRIED FORWARD TO OFFSET TAX LIABILITY IN SUBSEQUENT TAX
9 YEARS.

10 (2) A QUALIFIED COMMUNITY DEVELOPMENT ENTITY THAT SEEKS TO
11 HAVE AN EQUITY INVESTMENT OR LONG-TERM DEBT SECURITY DESIGNATED AS
12 A QUALIFIED EQUITY INVESTMENT AND ELIGIBLE FOR TAX CREDITS SHALL
13 APPLY TO THE DEPARTMENT FOR CERTIFICATION. A QUALIFIED TAXPAYER
14 SHALL NOT CLAIM A CREDIT UNDER THIS SECTION UNLESS THE QUALIFIED
15 COMMUNITY DEVELOPMENT ENTITY HAS SUBMITTED AN APPLICATION FOR
16 CERTIFICATION AND THE DEPARTMENT HAS ISSUED A CERTIFICATE TO THE
17 QUALIFIED COMMUNITY DEVELOPMENT ENTITY. THE TAXPAYER SHALL ATTACH
18 THE CERTIFICATE TO THE ANNUAL RETURN FILED UNDER THIS ACT, THE
19 MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601, OR
20 SECTION 476A OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL
21 500.476A, ON WHICH A CREDIT UNDER THIS SECTION IS CLAIMED.

22 (3) THE CERTIFICATE REQUIRED UNDER THIS SECTION SHALL STATE
23 ALL OF THE FOLLOWING:

24 (A) THE APPLICANT IS A QUALIFIED COMMUNITY DEVELOPMENT ENTITY.

25 (B) THE EQUITY INVESTMENT OR LONG-TERM DEBT SECURITY IS A
26 QUALIFIED EQUITY INVESTMENT.

27 (C) THE PROPOSED DOLLAR AMOUNT OF THE QUALIFIED EQUITY

1 INVESTMENT.

2 (D) THE DEPARTMENT SHALL CERTIFY QUALIFIED EQUITY INVESTMENTS
3 IN THE ORDER APPLICATIONS ARE RECEIVED BY THE DEPARTMENT.
4 APPLICATIONS RECEIVED ON THE SAME DAY SHALL BE DEEMED TO HAVE BEEN
5 RECEIVED SIMULTANEOUSLY. FOR APPLICATIONS RECEIVED ON THE SAME DAY
6 AND DEEMED COMPLETE, THE DEPARTMENT SHALL CERTIFY QUALIFIED EQUITY
7 INVESTMENTS AND, IN THE EVENT THERE IS INSUFFICIENT REMAINING TAX
8 CREDIT CAPACITY, REDUCE THE AMOUNT OF CERTIFIED QUALIFIED EQUITY
9 INVESTMENT IN PROPORTIONATE PERCENTAGES BASED UPON THE RATIO OF THE
10 AMOUNT OF QUALIFIED EQUITY INVESTMENTS REQUESTED IN AN APPLICATION
11 TO THE TOTAL AMOUNT OF QUALIFIED EQUITY INVESTMENTS REQUESTED IN
12 ALL APPLICATIONS RECEIVED ON THE SAME DAY.

13 (E) WITHIN 30 DAYS AFTER RECEIVING NOTICE OF CERTIFICATION,
14 THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY SHALL ISSUE THE
15 QUALIFIED EQUITY INVESTMENT AND RECEIVE CASH IN THE AMOUNT OF THE
16 CERTIFIED AMOUNT. THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY MUST
17 PROVIDE THE DEPARTMENT WITH EVIDENCE OF RECEIPT OF THE CASH
18 INVESTMENT WITHIN 10 BUSINESS DAYS AFTER RECEIPT. IF THE QUALIFIED
19 COMMUNITY DEVELOPMENT ENTITY DOES NOT RECEIVE THE CASH INVESTMENT
20 AND ISSUE THE QUALIFIED EQUITY INVESTMENT WITHIN 30 DAYS FOLLOWING
21 RECEIPT OF THE CERTIFICATION NOTICE, THE CERTIFICATION SHALL LAPSE
22 AND THE ENTITY MAY NOT ISSUE THE QUALIFIED EQUITY INVESTMENT
23 WITHOUT REAPPLYING TO THE DEPARTMENT FOR CERTIFICATION. A
24 CERTIFICATION THAT LAPSES REVERTS BACK TO THE DEPARTMENT AND MAY BE
25 REISSUED IN ACCORDANCE WITH THE APPLICATION PROCESS OUTLINED IN
26 THIS SECTION.

27 (4) TAX CREDITS EARNED BY A PARTNERSHIP, LIMITED LIABILITY

1 COMPANY, OR SUBCHAPTER S CORPORATION MAY BE ALLOCATED TO ITS
2 PARTNERS, MEMBERS, OR SHAREHOLDERS OF THAT ENTITY FOR THEIR DIRECT
3 USE IN ACCORDANCE WITH THE PROVISIONS OF ANY AGREEMENT AMONG THE
4 PARTNERS, MEMBERS, OR SHAREHOLDERS. A CREDIT AMOUNT ALLOCATED UNDER
5 THIS SUBSECTION MAY BE CLAIMED AGAINST THE PARTNER'S, MEMBER'S, OR
6 SHAREHOLDER'S TAX LIABILITY UNDER THIS ACT, THE MICHIGAN BUSINESS
7 TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601, OR SECTION 476A OF
8 THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.476A. A CREDIT
9 ALLOCATION UNDER THIS SUBSECTION SHALL BE MADE ON A FORM PRESCRIBED
10 BY THE DEPARTMENT. THE ENTITY AND ALLOCATEES SHALL SEND A COPY OF
11 THE COMPLETED ALLOCATION FORM TO THE DEPARTMENT IN THE TAX YEAR IN
12 WHICH THE ALLOCATION IS MADE AND ATTACH A COPY OF THE COMPLETED
13 ALLOCATION FORM TO THE ANNUAL RETURN REQUIRED TO BE FILED UNDER
14 THIS ACT FOR THAT TAX YEAR.

15 (5) THE DEPARTMENT SHALL RECAPTURE, AS PROVIDED UNDER THIS
16 SUBSECTION, FROM THE QUALIFIED TAXPAYER THAT CLAIMED THE CREDIT ON
17 A RETURN, THE TAX CREDIT ALLOWED UNDER THIS SECTION UNDER ANY OF
18 THE FOLLOWING CIRCUMSTANCES:

19 (A) IF ANY AMOUNT OF THE FEDERAL TAX CREDIT AVAILABLE WITH
20 RESPECT TO A QUALIFIED EQUITY INVESTMENT THAT IS ELIGIBLE FOR A TAX
21 CREDIT UNDER THIS SECTION IS RECAPTURED UNDER SECTION 45D OF THE
22 INTERNAL REVENUE CODE OF 1986. IN THAT CASE, THE DEPARTMENT'S
23 RECAPTURE SHALL BE PROPORTIONATE TO THE FEDERAL RECAPTURE WITH
24 RESPECT TO THAT QUALIFIED EQUITY INVESTMENT.

25 (B) IF THE ISSUER REDEEMS OR MAKES PRINCIPAL REPAYMENT WITH
26 RESPECT TO A QUALIFIED EQUITY INVESTMENT PRIOR TO THE SEVENTH
27 ANNIVERSARY OF THE ISSUANCE OF THE QUALIFIED EQUITY INVESTMENT. IN

1 THAT CASE, THE DEPARTMENT'S RECAPTURE SHALL BE PROPORTIONATE TO THE
2 AMOUNT OF THE REDEMPTION OR REPAYMENT WITH RESPECT TO THE QUALIFIED
3 EQUITY INVESTMENT.

4 (C) IF THE ISSUER FAILS TO INVEST AT LEAST 85% OF THE CASH
5 PURCHASE PRICE OF THE QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS IN
6 THIS STATE WITHIN 12 MONTHS OF THE ISSUANCE OF THE QUALIFIED EQUITY
7 INVESTMENT AND MAINTAIN SUCH LEVEL OF INVESTMENT IN QUALIFIED LOW-
8 INCOME COMMUNITY INVESTMENTS IN THIS STATE UNTIL THE LAST CREDIT
9 ALLOWANCE DATE FOR THAT QUALIFIED EQUITY INVESTMENT.

10 (6) FOR PURPOSES OF THIS SECTION, A QUALIFIED EQUITY
11 INVESTMENT SHALL BE CONSIDERED HELD BY A QUALIFIED COMMUNITY
12 DEVELOPMENT ENTITY EVEN IF THE INVESTMENT HAS BEEN SOLD OR REPAID,
13 PROVIDED THAT THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY REINVESTS
14 AN AMOUNT EQUAL TO THE CAPITAL RETURNED TO OR RECOVERED BY THE
15 QUALIFIED COMMUNITY DEVELOPMENT ENTITY FROM THE ORIGINAL
16 INVESTMENT, EXCLUSIVE OF ANY PROFITS REALIZED, IN ANOTHER QUALIFIED
17 LOW-INCOME COMMUNITY INVESTMENT IN THIS STATE WITHIN 12 MONTHS
18 AFTER THE RECEIPT OF THAT CAPITAL. A QUALIFIED COMMUNITY
19 DEVELOPMENT ENTITY IS NOT REQUIRED TO REINVEST CAPITAL RETURNED
20 FROM QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS AFTER THE SIXTH
21 ANNIVERSARY OF THE ISSUANCE OF THE QUALIFIED EQUITY INVESTMENT, THE
22 PROCEEDS OF WHICH WERE USED TO MAKE THE QUALIFIED LOW-INCOME
23 COMMUNITY INVESTMENT, AND THE QUALIFIED LOW-INCOME COMMUNITY
24 INVESTMENT SHALL BE CONSIDERED HELD BY THE QUALIFIED COMMUNITY
25 DEVELOPMENT ENTITY THROUGH THE SEVENTH ANNIVERSARY OF THE QUALIFIED
26 EQUITY INVESTMENT'S ISSUANCE. THE DEPARTMENT SHALL PROVIDE NOTICE
27 TO THE QUALIFIED TAXPAYER AND THE QUALIFIED COMMUNITY DEVELOPMENT

1 ENTITY OF ANY PROPOSED RECAPTURE OF TAX CREDITS PURSUANT TO THIS
2 SECTION. THE QUALIFIED TAXPAYER OR THE QUALIFIED COMMUNITY
3 DEVELOPMENT ENTITY SHALL HAVE 90 DAYS TO CURE ANY DEFICIENCY
4 INDICATED IN THE DEPARTMENT'S ORIGINAL RECAPTURE NOTICE AND AVOID
5 SUCH RECAPTURE. IF THE QUALIFIED TAXPAYER OR THE QUALIFIED
6 COMMUNITY DEVELOPMENT ENTITY FAILS OR IS UNABLE TO CURE SUCH
7 DEFICIENCY WITHIN THE 90-DAY PERIOD, THE DEPARTMENT SHALL PROVIDE
8 THE QUALIFIED TAXPAYER AND THE QUALIFIED COMMUNITY DEVELOPMENT
9 ENTITY FROM WHOM THE CREDIT IS TO BE RECAPTURED WITH A FINAL ORDER
10 OF RECAPTURE. ANY TAX CREDIT FOR WHICH A FINAL RECAPTURE ORDER HAS
11 BEEN ISSUED SHALL BE RECAPTURED BY THE DEPARTMENT FROM THE
12 QUALIFIED TAXPAYER WHO CLAIMED THE TAX CREDIT ON A TAX RETURN.

13 (7) THE TOTAL AMOUNT OF ALL CREDITS THAT MAY BE APPROVED UNDER
14 THIS SECTION, SECTION 465 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA
15 36, MCL 208.1465, AND SECTION 476A OF THE INSURANCE CODE OF 1956,
16 1956 PA 218, MCL 500.476A, SHALL NOT EXCEED \$20,000,000.00 NOT
17 INCLUDING ANY CARRIED-FORWARD AMOUNTS FROM CREDITS APPROVED IN A
18 PREVIOUS CALENDAR YEAR.

19 (8) THE DEPARTMENT MAY PROMULGATE RULES TO IMPLEMENT THIS
20 SECTION.

21 (9) AS USED IN THIS SECTION:

22 (A) "APPLICABLE PERCENTAGE" MEANS 0% FOR EACH OF THE FIRST 2
23 CREDIT ALLOWANCE DATES, 7% FOR THE THIRD CREDIT ALLOWANCE DATE, AND
24 8% FOR THE NEXT 4 CREDIT ALLOWANCE DATES.

25 (B) "CREDIT ALLOWANCE DATE" MEANS THE DATE ON WHICH THE
26 QUALIFIED EQUITY INVESTMENT IS INITIALLY MADE AND EACH OF THE 6
27 ANNIVERSARY DATES OF THAT DATE THEREAFTER.

1 (C) "LONG-TERM DEBT SECURITY" MEANS ANY DEBT INSTRUMENT ISSUED
2 BY A QUALIFIED COMMUNITY DEVELOPMENT ENTITY, AT PAR VALUE OR A
3 PREMIUM, WITH AN ORIGINAL MATURITY DATE OF AT LEAST 7 YEARS FROM
4 THE DATE OF ITS ISSUANCE, WITH NO ACCELERATION OF REPAYMENT,
5 AMORTIZATION, OR PREPAYMENT FEATURES PRIOR TO ITS ORIGINAL MATURITY
6 DATE AND WITH NO DISTRIBUTION, PAYMENT, OR INTEREST FEATURES
7 RELATED TO THE PROFITABILITY OF THE QUALIFIED COMMUNITY DEVELOPMENT
8 ENTITY OR THE PERFORMANCE OF THE QUALIFIED COMMUNITY DEVELOPMENT
9 ENTITY INVESTMENT PORTFOLIO. THIS DEFINITION IN NO WAY LIMITS THE
10 HOLDER'S ABILITY TO ACCELERATE PAYMENTS ON THE DEBT INSTRUMENT IN
11 SITUATIONS WHERE THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY HAS
12 DEFAULTED ON COVENANTS DESIGNED TO ENSURE COMPLIANCE WITH THIS ACT
13 OR SECTION 45D OF THE INTERNAL REVENUE CODE OF 1986.

14 (D) "PURCHASE PRICE" MEANS THE AMOUNT PAID TO THE QUALIFIED
15 COMMUNITY DEVELOPMENT ENTITY FOR THE QUALIFIED EQUITY INVESTMENT.

16 (E) "QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS" HAS THE
17 MEANING GIVEN TO THAT TERM IN SECTION 45D OF THE INTERNAL REVENUE
18 CODE OF 1986, EXCEPT THAT ANY BUSINESS THAT DERIVES OR PROJECTS TO
19 DERIVE 15% OR MORE OF ITS ANNUAL REVENUE FROM THE RENTAL OR SALE OF
20 REAL ESTATE IS NOT CONSIDERED TO BE A QUALIFIED ACTIVE LOW-INCOME
21 COMMUNITY BUSINESS UNLESS THE BUSINESS IS CONTROLLED BY, OR UNDER
22 COMMON CONTROL WITH, ANOTHER BUSINESS THAT DOES NOT DERIVE OR
23 PROJECT TO DERIVE 15% OR MORE OF ITS ANNUAL REVENUE FROM THE RENTAL
24 OR SALE OF REAL ESTATE AND IS THE PRIMARY TENANT OF THE REAL ESTATE
25 LEASED FROM THE INITIAL BUSINESS. A BUSINESS SHALL BE CONSIDERED A
26 QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS FOR THE DURATION OF
27 THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY'S INVESTMENT IN, OR LOAN

1 TO, THE BUSINESS IF THE ENTITY REASONABLY EXPECTS, AT THE TIME IT
2 MAKES THE INVESTMENT OR LOAN, THAT THE BUSINESS WILL CONTINUE TO
3 SATISFY THE REQUIREMENTS FOR BEING A QUALIFIED ACTIVE LOW-INCOME
4 COMMUNITY BUSINESS THROUGHOUT THE ENTIRE PERIOD OF THE INVESTMENT
5 OR LOAN.

6 (F) "QUALIFIED COMMUNITY DEVELOPMENT ENTITY" HAS THE MEANING
7 GIVEN TO THAT TERM IN SECTION 45D OF THE INTERNAL REVENUE CODE OF
8 1986, PROVIDED THAT SUCH ENTITY HAS ENTERED INTO, OR IS CONTROLLED
9 BY A QUALIFIED COMMUNITY DEVELOPMENT ENTITY THAT HAS ENTERED INTO,
10 AN ALLOCATION AGREEMENT WITH THE COMMUNITY DEVELOPMENT FINANCIAL
11 INSTITUTIONS FUND OF THE UNITED STATES TREASURY DEPARTMENT WITH
12 RESPECT TO CREDITS AUTHORIZED BY SECTION 45D OF THE INTERNAL
13 REVENUE CODE OF 1986. THE ALLOCATION AGREEMENT SHALL INCLUDE THE
14 STATE OF MICHIGAN WITHIN THE SERVICE AREA SET FORTH IN THAT
15 ALLOCATION AGREEMENT.

16 (G) "QUALIFIED EQUITY INVESTMENT" MEANS ANY EQUITY INVESTMENT
17 IN, OR LONG-TERM DEBT SECURITY ISSUED BY, A QUALIFIED COMMUNITY
18 DEVELOPMENT ENTITY THAT IS ACQUIRED AFTER THE EFFECTIVE DATE OF THE
19 AMENDATORY ACT THAT ADDED THIS SECTION AT ITS ORIGINAL ISSUANCE
20 SOLELY IN EXCHANGE FOR CASH, HAS AT LEAST 85% OF ITS CASH PURCHASE
21 PRICE USED BY THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY TO MAKE
22 QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS IN THIS STATE, AND IS
23 DESIGNATED BY THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY AS A
24 QUALIFIED EQUITY INVESTMENT UNDER THIS SECTION AND IS CERTIFIED BY
25 THE DEPARTMENT AS NOT EXCEEDING THE LIMITATION CONTAINED IN
26 SUBSECTION (7). QUALIFIED EQUITY INVESTMENT INCLUDES ANY QUALIFIED
27 EQUITY INVESTMENT THAT IS NOT ACQUIRED AFTER THE EFFECTIVE DATE OF

1 THE AMENDATORY ACT THAT ADDED THIS SECTION AT ITS ORIGINAL ISSUANCE
2 SOLELY IN EXCHANGE FOR CASH IF THE INVESTMENT WAS A QUALIFIED
3 EQUITY INVESTMENT IN THE HANDS OF A PRIOR HOLDER.

4 (H) "QUALIFIED LOW-INCOME COMMUNITY INVESTMENT" MEANS ANY
5 CAPITAL OR EQUITY INVESTMENT IN, OR LOAN TO, ANY QUALIFIED ACTIVE
6 LOW-INCOME COMMUNITY BUSINESS MADE AFTER THE EFFECTIVE DATE OF THE
7 AMENDATORY ACT THAT ADDED THIS SECTION. WITH RESPECT TO ANY 1
8 QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS, THE MAXIMUM AMOUNT
9 OF QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS MADE IN THAT
10 BUSINESS, ON A COLLECTIVE BASIS WITH ALL OF ITS AFFILIATES THAT MAY
11 BE COUNTED TOWARDS THE SATISFACTION OF THE MINIMUM 85% CASH PURPOSE
12 PRICE USED BY THE ISSUER TO MAKE QUALIFIED LOW-INCOME COMMUNITY
13 INVESTMENTS IN THIS STATE, SHALL BE \$10,000,000.00 WHETHER ISSUED
14 TO 1 OR SEVERAL QUALIFIED COMMUNITY DEVELOPMENT ENTITIES.

15 (I) "QUALIFIED TAXPAYER" MEANS A TAXPAYER THAT IS LIABLE UNDER
16 THIS ACT, THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101
17 TO 208.1601, OR SECTION 476A OF THE INSURANCE CODE OF 1956, 1956 PA
18 218, MCL 500.476A.