

HOUSE BILL No. 6431

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 2007 PA 36, entitled
"Michigan business tax act,"
(MCL 208.1101 to 208.1601) by adding section 465.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 465. (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 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO
7 206.532, 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
10 FOR THE QUALIFIED EQUITY INVESTMENT. THE CREDIT ALLOWED UNDER THIS

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

9 (2) A QUALIFIED COMMUNITY DEVELOPMENT ENTITY THAT SEEKS TO
10 HAVE AN EQUITY INVESTMENT OR LONG-TERM DEBT SECURITY DESIGNATED AS
11 A QUALIFIED EQUITY INVESTMENT AND ELIGIBLE FOR TAX CREDITS SHALL
12 APPLY TO THE DEPARTMENT FOR CERTIFICATION. A QUALIFIED TAXPAYER
13 SHALL NOT CLAIM A CREDIT UNDER THIS SECTION UNLESS THE QUALIFIED
14 COMMUNITY DEVELOPMENT ENTITY HAS SUBMITTED AN APPLICATION FOR
15 CERTIFICATION AND THE DEPARTMENT HAS ISSUED A CERTIFICATE TO THE
16 QUALIFIED COMMUNITY DEVELOPMENT ENTITY. THE TAXPAYER SHALL ATTACH
17 THE CERTIFICATE TO THE ANNUAL RETURN FILED UNDER THIS ACT, THE
18 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, OR
19 SECTION 476A OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL
20 500.476A, ON WHICH A CREDIT UNDER THIS SECTION IS CLAIMED.

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

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

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

26 (C) THE PROPOSED DOLLAR AMOUNT OF THE QUALIFIED EQUITY
27 INVESTMENT.

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

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

26 (4) TAX CREDITS EARNED BY A PARTNERSHIP, LIMITED LIABILITY
27 COMPANY, OR SUBCHAPTER S CORPORATION MAY BE ALLOCATED TO ITS

PARTNERS, MEMBERS, OR SHAREHOLDERS OF THAT ENTITY FOR THEIR DIRECT USE IN ACCORDANCE WITH THE PROVISIONS OF ANY AGREEMENT AMONG THE PARTNERS, MEMBERS, OR SHAREHOLDERS. A CREDIT AMOUNT ALLOCATED UNDER THIS SUBSECTION MAY BE CLAIMED AGAINST THE PARTNER'S, MEMBER'S, OR SHAREHOLDER'S TAX LIABILITY UNDER THIS ACT, THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, OR SECTION 476A OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.476A. A CREDIT ALLOCATION UNDER THIS SUBSECTION SHALL BE MADE ON A FORM PRESCRIBED BY THE DEPARTMENT. THE ENTITY AND ALLOCATEES SHALL SEND A COPY OF THE COMPLETED ALLOCATION FORM TO THE DEPARTMENT IN THE TAX YEAR IN WHICH THE ALLOCATION IS MADE AND ATTACH A COPY OF THE COMPLETED ALLOCATION FORM TO THE ANNUAL RETURN REQUIRED TO BE FILED UNDER THIS ACT FOR THAT TAX YEAR.

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

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

(B) IF THE ISSUER REDEEMS OR MAKES PRINCIPAL REPAYMENT WITH RESPECT TO A QUALIFIED EQUITY INVESTMENT PRIOR TO THE SEVENTH ANNIVERSARY OF THE ISSUANCE OF THE QUALIFIED EQUITY INVESTMENT. IN THAT CASE, THE DEPARTMENT'S RECAPTURE SHALL BE PROPORTIONATE TO THE

1 AMOUNT OF THE REDEMPTION OR REPAYMENT WITH RESPECT TO THE QUALIFIED
2 EQUITY INVESTMENT.

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

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

SECTION. THE QUALIFIED TAXPAYER OR THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY SHALL HAVE 90 DAYS TO CURE ANY DEFICIENCY INDICATED IN THE DEPARTMENT'S ORIGINAL RECAPTURE NOTICE AND AVOID SUCH RECAPTURE. IF THE QUALIFIED TAXPAYER OR THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY FAILS OR IS UNABLE TO CURE SUCH DEFICIENCY WITHIN THE 90-DAY PERIOD, THE DEPARTMENT SHALL PROVIDE THE QUALIFIED TAXPAYER AND THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY FROM WHOM THE CREDIT IS TO BE RECAPTURED WITH A FINAL ORDER OF RECAPTURE. ANY TAX CREDIT FOR WHICH A FINAL RECAPTURE ORDER HAS BEEN ISSUED SHALL BE RECAPTURED BY THE DEPARTMENT FROM THE QUALIFIED TAXPAYER WHO CLAIMED THE TAX CREDIT ON A TAX RETURN.

(7) THE TOTAL AMOUNT OF ALL CREDITS THAT MAY BE APPROVED UNDER THIS SECTION, SECTION 279 OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.279, AND SECTION 476A OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.476A, SHALL NOT EXCEED \$20,000,000.00 NOT INCLUDING ANY CARRIED-FORWARD AMOUNTS FROM CREDITS APPROVED IN A PREVIOUS CALENDAR YEAR.

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

(9) AS USED IN THIS SECTION:

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

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

(C) "LONG-TERM DEBT SECURITY" MEANS ANY DEBT INSTRUMENT ISSUED

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

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

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

1 MAKES THE INVESTMENT OR LOAN, THAT THE BUSINESS WILL CONTINUE TO
2 SATISFY THE REQUIREMENTS FOR BEING A QUALIFIED ACTIVE LOW-INCOME
3 COMMUNITY BUSINESS THROUGHOUT THE ENTIRE PERIOD OF THE INVESTMENT
4 OR LOAN.

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

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

1 SOLELY IN EXCHANGE FOR CASH IF THE INVESTMENT WAS A QUALIFIED
2 EQUITY INVESTMENT IN THE HANDS OF A PRIOR HOLDER.

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

14 (I) "QUALIFIED TAXPAYER" MEANS A TAXPAYER THAT IS LIABLE UNDER
15 THIS ACT, THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO
16 206.532, OR SECTION 476A OF THE INSURANCE CODE OF 1956, 1956 PA
17 218, MCL 500.476A.