

Act No. 240
Public Acts of 2009
Approved by the Governor
January 8, 2010
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January 8, 2010
EFFECTIVE DATE: January 8, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

Introduced by Reps. Clemente, Angerer, Barnett, Bauer, Lisa Brown, Terry Brown, Constan, Corriveau, Crawford, Dean, Denby, DeShazor, Durhal, Espinoza, Geiss, Gonzales, Gregory, Haase, Haines, Hansen, Haugh, Hildenbrand, Horn, Huckleberry, Rick Jones, Robert Jones, Kennedy, Knollenberg, LeBlanc, Leland, Lemmons, Liss, Marleau, Mayes, Melton, Moss, Nathan, Neumann, Polidori, Proos, Rocca, Wayne Schmidt, Schuitmaker, Bettie Scott, Scripps, Segal, Sheltroun, Slezak, Spade, Switalski and Valentine

ENROLLED HOUSE BILL No. 5469

AN ACT to amend 2007 PA 36, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations," by amending section 434 (MCL 208.1434), as amended by 2009 PA 110.

The People of the State of Michigan enact:

Sec. 434. (1) The Michigan economic growth authority is authorized to enter into agreements to provide tax credits available under this section to stimulate the domestic commercialization and affordability of high-power energy batteries, the lack of which today is limiting hybrid, plug-in hybrid battery-electric, and fuel cell vehicle applications, and to help insure that job growth from battery technology and commercial production develops alongside advanced vehicle technology development and renewable power generation initiatives both within and outside the transportation sector.

(2) Subject to the limitations provided under this section, for tax years that begin on or after January 1, 2010 and end before January 1, 2015, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will manufacture plug-in traction battery packs in this state may claim a credit against the tax imposed by this act for the manufacture of those plug-in traction battery packs as provided in this section. The Michigan economic growth authority may enter into more than 1 agreement under this section. However, the total number of plug-in traction battery packs eligible for all credits under all agreements allowed under this section shall not exceed the number of plug-in traction battery packs eligible for a credit as provided in this section and at least 1 agreement shall make capital investments of not less than \$200,000,000.00 not later than December 31, 2012. A taxpayer shall not claim a credit under this section for more than 3 years. The total of all credits allowed under this section shall be as follows:

(a) For tax years beginning after December 31, 2010 and ending before January 1, 2012, \$500.00 for an equivalent of 4 kilowatt hours of battery capacity plus \$125.00 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours of battery capacity not to exceed \$2,000.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 20,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed \$40,000,000.00.

(b) For tax years beginning after December 31, 2011 and ending before January 1, 2013, \$375.00 for an equivalent of 4 kilowatt hours of battery capacity plus \$93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours of battery capacity not to exceed \$1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 40,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed \$43,000,000.00. A single taxpayer shall not claim a credit for more than 25,000 plug-in traction battery pack units under this subdivision. The number of battery pack units not used for credits under subdivision (a) may be added to the total number of battery pack units for which a credit is available under this subdivision, and the credits for those units shall be calculated as described in subdivision (a) and shall be in addition to the maximums allowed for any 1 taxpayer under this subdivision or the total limits allowed under this subdivision.

(c) For tax years beginning after December 31, 2012 and ending before January 1, 2014, \$375.00 for an equivalent of 4 kilowatt hours of battery capacity plus \$93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours not to exceed \$1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 40,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed \$43,000,000.00. A single taxpayer shall not claim a credit for more than 25,000 plug-in traction battery pack units under this subdivision.

(d) For tax years beginning after December 31, 2013 and ending before January 1, 2015, \$375.00 for an equivalent of 4 kilowatt hours of battery capacity plus \$93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours not to exceed \$1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 25,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed \$9,000,000.00.

(3) For tax years that begin on or after January 1, 2012 and subject to the limitations of this subsection, a taxpayer may claim a credit of up to 75% of the qualified expenses for vehicle engineering in this state to support battery integration, prototyping, and launch expenses incurred for tax years that begin on or after January 1, 2009 and end before January 1, 2014. This credit shall not exceed \$15,000,000.00 per year as agreed to and certified by the Michigan economic growth authority. Any expenses for which a credit is claimed under this subsection shall not be included in costs and expenses used for credits available under sections 403 and 405. The Michigan economic growth authority may not authorize more than \$135,000,000.00 in total credits to all taxpayers under this subsection. To claim the credit under this subsection, a taxpayer must manufacture a cumulative total of at least 1,000 motor vehicles that would qualify for the credit under section 30D of the internal revenue code and the credit shall be available to the taxpayer only for the following percentages of the total authorized annual expenses:

(a) In a tax year in which the taxpayer has manufactured a cumulative total of at least 1,000 motor vehicles and fewer than 2,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 20%.

(b) In a tax year in which the taxpayer has manufactured a cumulative total of at least 2,000 motor vehicles but fewer than 3,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 40%.

(c) In a tax year in which the taxpayer has manufactured a cumulative total of at least 3,000 motor vehicles but fewer than 4,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 60%.

(d) In a tax year in which the taxpayer has manufactured a cumulative total of at least 4,000 motor vehicles but fewer than 5,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 80%.

(e) In a tax year in which the taxpayer has manufactured a cumulative total of at least 5,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 100%.

(4) For tax years that begin on or after January 1, 2012 and end before January 1, 2015, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will increase its engineering activities in this state for advanced automotive battery technologies may claim a credit under this subsection. A taxpayer's qualified advanced battery engineering expenses for advanced automotive battery technologies shall exceed those expenses for the taxpayer's 2008 fiscal year to qualify for the credit under this subsection. The Michigan economic growth authority may enter into not more than 1 agreement for advanced battery engineering credits, and the total value of credits available under this subsection is limited to \$30,000,000.00. The credits under this subsection shall be allowed as follows:

(a) Up to 75% of the total dollar amount of the qualified advanced battery engineering expenses of an authorized business incurred during tax years beginning on or after January 1, 2009 and ending before January 1, 2014. The taxpayer must submit to the Michigan economic growth authority an affidavit certifying the amount of qualified advanced battery engineering expenses for each year.

(b) Notwithstanding any other provision of this section, a taxpayer may claim no more than \$10,000,000.00 in credits under this subsection in any tax year.

(c) The credits available under this subsection shall not be allowed if the taxpayer claims credits under subsection (2) for battery pack assembly for the tax year. Notwithstanding this limitation, the credits available under this subsection are in addition to any other incentives which may be authorized under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, for other related or unrelated projects including the vehicle research and development

expenses authorized under subsection (3). Any expenses for which a credit is claimed under this subsection shall not be included in costs and expenses used for credits available under sections 403 and 405.

(5) A taxpayer that has entered into an agreement with the Michigan economic growth authority may claim a credit equal to 50% of the capital investment expenses for any tax year for the construction of an integrative cell manufacturing facility that includes anode and cathode manufacturing and cell assembly if the taxpayer will create not less than 300 new jobs in this state. Not more than 5 agreements may be entered into under this section, and the maximum allowable credit under each agreement shall not exceed \$25,000,000.00 per year for no more than 4 years. No credit shall be claimed in a tax year beginning before 2012. However, tax credits may be based on expenses incurred in this state in prior years. The Michigan economic growth authority shall not adopt a resolution authorizing an agreement to provide credits under this subsection after March 31, 2010.

(6) A taxpayer that has entered into an agreement with the Michigan economic growth authority may claim a credit equal to 25% of the capital investment expenses for any tax year for the construction of a facility that will produce large scale batteries and manufacture integrated power management, smart control, and storage systems from 500 kilowatts to 100 megawatts if the taxpayer will create not fewer than 500 new jobs in this state and the taxpayer has received federal loan guarantees for a project that employs innovative energy efficiency, renewable energy, and advanced transmission and distribution technologies from the United States department of energy under section 1703 of title XVII of the energy policy act of 2005, 42 USC 16513. Not more than 1 agreement may be entered into under this subsection, and the maximum allowable credit under the agreement shall not exceed \$25,000,000.00 per year for no more than 4 years. No credit shall be claimed in a tax year beginning before 2012. The Michigan economic growth authority shall not adopt a resolution authorizing an agreement to provide a credit under this subsection after March 1, 2010.

(7) Subject to the limitations under subsection (8), for tax years that begin on or after January 1, 2012 and end before January 1, 2017, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will manufacture advanced lithium ion battery packs in this state may claim a credit against the tax imposed by this act for the manufacture of those advanced lithium ion battery packs as follows:

(a) For a taxpayer that agrees to make capital investments in this state of not less than \$250,000,000.00, to create at least 1,000 new jobs that shall include jobs that are transferred to this state from a foreign country, and to manufacture not less than 225,000 advanced lithium ion battery packs in this state, a total credit of not more than \$26,000,000.00 per tax year for no more than 3 tax years. The Michigan economic growth authority shall not adopt a resolution authorizing an agreement under this subdivision after March 1, 2010.

(b) For a taxpayer that agrees to make capital investments in this state of not less than \$200,000,000.00 and to create at least 300 new jobs, a total credit of not more than \$42,000,000.00 over 4 consecutive tax years unless otherwise provided under subsection (10). Unless the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available or that there are credits available under subsection (7)(a) for additional credits under this subdivision, the Michigan economic growth authority shall not adopt a resolution authorizing an agreement under this subdivision after March 1, 2010.

(8) Any capital investments made, jobs created, or expenses incurred pursuant to an agreement entered for a credit under subsection (7) or (9) shall be in addition to any other capital investments, jobs, or expenses used for any other credit available under this section and shall not be included or used for a credit available under any subsection other than subsection (7) or (9), respectively. A taxpayer that claims a credit under subsection (7)(a) shall not claim an additional credit under subsection (7)(b). For purposes of subsection (7), "new job" means a full-time job created by a taxpayer related to its advanced lithium ion battery activities, including its battery pack assembly facility, a cell manufacturing facility, and a motor vehicle assembly facility at which the battery pack is installed in a motor vehicle, or related battery engineering, that is in excess of the number of active full-time jobs the taxpayer maintained in this state prior to the effective date of the amendatory act that added this subsection as determined by the Michigan economic growth authority.

(9) Subject to the limitations of this subsection, if the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available, then for tax years that begin on or after January 1, 2015 and end before January 1, 2017 a taxpayer may claim a credit of up to 75% of the costs incurred during each tax year that begins on or after January 1, 2013 and ends before January 1, 2016 to implement a sourcing program to utilize battery cells from a business that has entered into an agreement under subsection (5) for the construction of an integrative cell manufacturing facility. Costs eligible for the credit under this subsection shall include payments for battery pack and vehicle engineering and associated design or integration including prototyping, facility, equipment or component retooling, and vehicle regulatory certification and shall include costs such as direct labor, purchases of capital equipment at cost, expensed supplies, intellectual property licensing, services, and financing, as determined and certified by the Michigan economic growth authority. Any costs for which a credit is claimed under this subsection shall not be included in costs and expenses used for credits available under sections 403 and 405. The Michigan economic growth authority may enter into more than 1 agreement under this subsection. The Michigan economic growth authority shall not authorize more than an amount equal to 25% of the previously issued credits available under subsection (6) as determined under subsection (10) in total credits to all taxpayers under this subsection. A single taxpayer shall not

claim a credit of more than \$12,500,000.00 per year for no more than 2 years. To claim the credit under this subsection, a taxpayer must manufacture at least 10,000 motor vehicles in each year a credit is claimed at a facility in this state at which some of the costs eligible for a credit under this subsection are or were incurred. An agreement entered into under this subsection shall contain a repayment provision that if the taxpayer relocates its battery pack assembly facility for which credits are taken under subsection (7) outside of this state during the term of the agreement or subsequently substantially fails to meet the requirements of the agreement, as determined by the Michigan economic growth authority, the taxpayer shall have its credit reduced or terminated or have a percentage of the amount previously claimed under this subsection added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(10) If the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available, an amount equal to 25% of those previously issued credits may be used by the authority to enter into agreements for which a credit may be claimed under subsection (9) and an amount equal to 25% of those previously issued credits may be used by the authority to enter into additional agreements for which a credit may be claimed under subsection (7)(b). If the Michigan economic growth authority approves a total of less than \$78,000,000.00 in credits under subsection (7)(a), the Michigan economic growth authority may use the difference between \$78,000,000.00 and the total amount of credits approved under subsection (7)(a) to approve additional credits under subsection (7)(b). As used in this subsection and subsections (7) and (9), "previously issued credits" means the total amount of credits authorized by the authority for a taxpayer under subsection (6) that meets all of the following:

(a) The taxpayer did not use any or a portion of the credits authorized under the written agreement under subsection (6).

(b) The authority determined at a meeting upon a vote of the majority of the members present that the credits previously authorized satisfy subdivision (a).

(11) The Michigan economic growth authority shall appoint a review board to advise it about decisions concerning credits under subsection (5). The review board shall be composed of not fewer than 2 independent scientists. Additional experts may be sought on an ad hoc basis to review business plans and addressable markets. In making its recommendations, the review board shall give preference to technologies presenting novel materials, manufacturing, and performance qualities. The review board shall also consider all of the following:

(a) Business activities related to advanced battery technology occurring exclusively in Michigan.

(b) Activities directly related to whole cell production, from materials to large format cells, in Michigan.

(c) Scalability of manufacturing processes that are established, are robust, and address strategic global automotive market requirements.

(12) Credits under this section shall be taken after nonrefundable credits available under this act. If a credit or the sum of credits allowed under this section exceeds the tax liability of the taxpayer for the tax year, the taxpayer may elect to have that portion that exceeds the tax liability of the taxpayer refunded or to have the excess carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. Amounts carried forward shall not affect the maximum amount of credits that may be claimed in subsequent years.

(13) An agreement entered into for tax credits under this section shall specify all of the following:

(a) For credits provided under subsection (2), the number of plug-in traction battery packs eligible for a credit for each tax year covered by the period of the agreement and the maximum amount of the credit that may be claimed by the taxpayer in each tax year.

(b) If the taxpayer claims a credit under subsection (3), the qualified expenses for vehicle engineering, prototype, and launch costs and the annual and total dollar amount of the credits that may be claimed under subsection (3).

(c) If the taxpayer claims a credit under subsection (4), the total dollar amount of the credits that may be claimed under subsection (4).

(d) If a taxpayer claims a credit under subsection (5), all of the following:

(i) The location of the facility.

(ii) The estimated total cost of the facility.

(iii) The capital investment expenses that qualify for the credit under subsection (5).

(iv) The annual and total dollar amount of the credits that may be claimed under subsection (5).

(v) A repayment provision that if the taxpayer subsequently substantially fails to meet certain requirements of the agreement, as determined by the Michigan economic growth authority, the taxpayer may have its credit reduced or terminated or have a percentage of the amount previously claimed under subsection (5) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(e) If a taxpayer claims a credit under subsection (6), all of the following:

(i) The location of the facility.

(ii) The estimated total cost of the facility.

(iii) The capital investment expenses that qualify for the credit under subsection (6).

(iv) The annual and total dollar amount of the credits that may be claimed under subsection (6).

(v) The minimum number of new jobs to be created in this state each year to qualify for the credit under subsection (6).

(vi) A repayment provision that if the taxpayer subsequently substantially fails to meet certain requirements of the agreement, as determined by the Michigan economic growth authority, the taxpayer may have its credit reduced or terminated or have a percentage of the amount previously claimed under subsection (6) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(f) If a taxpayer claims a credit under subsection (7), all of the following:

(i) A provision that the taxpayer agrees to make a good faith effort to utilize Michigan suppliers and vendors when purchasing components and services related to the production of advanced lithium ion battery packs for which a credit is claimed in the 2012, 2013, and 2014 tax years. For a credit during the 2015 and 2016 tax years, a provision that the taxpayer shall utilize cells from a business that has entered into an agreement under subsection (5) for the construction of an integrative cell manufacturing facility.

(ii) A repayment provision that if the taxpayer relocates its advanced lithium ion battery pack assembly facility that produces the battery pack units for which the credit is claimed under subsection (7) outside of this state during the term of the agreement or subsequently fails to meet the capital investment or new jobs requirements of the agreement entered into for a credit under subsection (7), as determined by the Michigan economic growth authority, the taxpayer shall have a percentage of the amount previously claimed under subsection (7) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement entered into for a credit under subsection (7) and shall have its credit terminated or reduced prospectively.

(iii) The minimum number of advanced lithium ion battery packs to be manufactured to be eligible for a credit for each tax year covered by the period of the agreement and the maximum amount of the credit that may be claimed by the taxpayer in each tax year.

(iv) The capital investment that qualifies for the credit under subsection (7).

(v) The minimum number of new jobs to be created in this state to qualify for the credit under subsection (7).

(14) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the annual return filed under this act on which a credit under this section is claimed. The certificate required under this subsection shall state all of the following:

(a) The taxpayer is located in this state and engaged in activity that qualifies for the credit under this section.

(b) The taxpayer's federal employer identification number or the Michigan department of treasury number assigned to the taxpayer and, for a taxpayer that is a unitary business group, the federal employer identification number or Michigan department of treasury number assigned to the member of the group engaged in this state in activity that qualifies for a credit under this section.

(c) If applicable, the number of plug-in traction battery pack units or advanced lithium ion battery pack units manufactured by the taxpayer during the designated tax year and the amount of the credit under this section for which the taxpayer is allowed to claim for the designated tax year.

(d) For credits available under subsections (3), (4), (5), (6), (7), and (9), the amount of the credit available for the tax year and such other information as may be required by the department.

(15) As used in this section:

(a) "Advanced automotive battery technology" means a rechargeable lithium battery that supports vehicle propulsion or other advanced technologies as may be further defined by the Michigan economic growth authority.

(b) "Advanced lithium ion battery pack" means an assembled unit of battery cells containing rechargeable lithium ion chemistry designed and mass-produced for the purpose of transportation, including defense and commercial applications.

(c) "Battery cell" means the basic electrochemical unit that provides a source of electrical energy by direct conversion of chemical energy and consists of an assembly of electrodes, separators, electrolyte, container, and terminals.

(d) "Capital investment" means expenses incurred during the tax year and included in an agreement under this section that are associated with facilities, equipment, tooling and engineering, and manufacturing, including salaries, contract services, taxes, utilities, raw materials, and supplies.

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

(f) "Plug-in traction battery pack" means an electrochemical energy storage device that meets the following requirements:

(i) Has a traction battery capacity of not less than 4.0 kilowatt hours.

(ii) Is equipped with an electrical plug by means of which it can be energized and recharged when plugged into an external source of power.

(iii) Consists of standardized configuration and is mass-produced.

(iv) Has been tested and approved by the national highway transportation safety administration as compliant with applicable motor vehicle and motor vehicle equipment safety standards when installed by a mechanic with standardized training in protocols established by the manufacturer as part of a nationwide distribution program.

(v) Is installed in a new qualified plug-in electric drive motor vehicle that qualifies for the credit under section 30D of the internal revenue code.

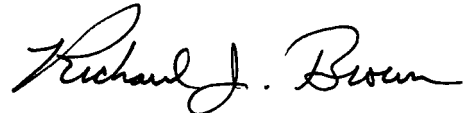
(g) "Qualified advanced battery engineering expenses" means that part of a taxpayer's qualified research expenses as defined under section 41(b) of the internal revenue code related to engineering research and development related to advanced automotive battery technology.

(h) "Qualified expenses for vehicle engineering" means that part of a taxpayer's expenses for activities within this state related to integrating batteries into a motor vehicle that would qualify for the credit under section 30D of the internal revenue code including such qualified research expenses as defined under section 41(b) of the internal revenue code.

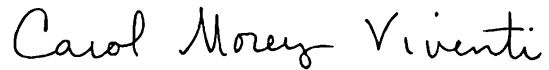
(i) "Traction battery capacity" is the number of kilowatt hours measured from a 100% state of charge to a 0% state of charge.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 818 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: Senate Bill No. 818, referred to in enacting section 1, was filed with the Secretary of State January 8, 2010, and became 2009 PA 241, Imd. Eff. Jan. 8, 2010.