

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4523

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 430 (MCL 208.1430), as added by 2008 PA 270.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 430. (1) Except as otherwise provided under subsection
2 ~~(6)~~—(3) and subject to the limitations under subsection (2), for
3 tax years that begin on or after January 1, 2009, a qualified
4 taxpayer **AND AN ELIGIBLE TAXPAYER** that has entered into an
5 agreement with the Michigan economic growth authority that provides
6 that the taxpayer will construct and operate in this state a new
7 facility for development and manufacturing of photovoltaic energy,
8 photovoltaic systems, or other photovoltaic technology may claim a
9 credit against the tax imposed by this act equal to ~~50%~~25% of the
10 capital investments made by the taxpayer in that new facility

House Bill No. 4523 as amended September 10, 2009

during the tax year **BUT NOT TO EXCEED \$15,000,000.00.**

(2) The Michigan economic growth authority shall not enter into an agreement under this section after ~~November 1, 2008~~ **DECEMBER 31, 2011.** The total amount of credits allowed under this section for all tax years shall not exceed ~~\$25,000,000.00~~ **\$75,000,000.00.** An agreement shall specify all of the following:

(a) The amount of capital investment that will be made in a new facility engaged in the development and manufacturing of photovoltaic energy, photovoltaic systems, and other photovoltaic technology.

(b) The number of qualified new jobs at the facility at which the investment will be made.

(c) The total credit that may be claimed under this section.

(3) THE MICHIGAN ECONOMIC GROWTH AUTHORITY MAY ENTER INTO 1 AGREEMENT WITH AN ELIGIBLE TAXPAYER FOR A CREDIT UNDER THIS SECTION OF MORE THAN \$15,000,000.00 BUT NOT MORE THAN \$25,000,000.00.

(4) ~~(3)~~ <<The EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBSECTION, THE>> credit allowed under this section shall be taken by a ~~qualified taxpayer~~ in equal installments over 2 years beginning with the tax year in which the certification was issued. <<THE MICHIGAN ECONOMIC GROWTH AUTHORITY MAY ALLOW ONLY 1 TAXPAYER WITH WHOM IT HAS ENTERED INTO AN AGREEMENT FOR A CREDIT UNDER THIS SECTION OF \$15,000,000.00 OR LESS TO CLAIM THE TOTAL AMOUNT OF THE CREDIT ALLOWED IN THE SAME TAX YEAR IN WHICH THE CERTIFICATION WAS ISSUED.>>

If in any of those years the credit allowed under this section for the tax year exceeds the taxpayer's or assignee's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall be refunded.

(5) ~~(4)~~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

1 credit under this section is claimed. The certificate required
2 under this subsection shall state all of the following:

3 (a) The taxpayer is located in this state and engaged in the
4 development and manufacturing of photovoltaic energy, photovoltaic
5 systems, or other photovoltaic technology and qualifies for the
6 credit under this section.

7 (b) The taxpayer's federal employer identification number or
8 the Michigan department of treasury number assigned to the taxpayer
9 and, for a taxpayer that is a unitary business group, the federal
10 employer identification number or Michigan department of treasury
11 number assigned to the member of the group engaged in this state in
12 the development and manufacturing of photovoltaic energy,
13 photovoltaic systems, or other photovoltaic technology.

14 (c) The total amount of capital investments made during the
15 tax year and the amount of the credit under this section for which
16 the taxpayer is allowed to claim for the designated tax year.

17 (6) ~~(5)~~—A taxpayer or assignee that claims a credit under this
18 section and subsequently fails to meet the requirements of this
19 section or any other conditions established by the Michigan
20 economic growth authority in the agreement provided for in this
21 section in order to obtain a certificate for which the credit was
22 claimed under this section may, as to be determined by the Michigan
23 economic growth authority, have its credit reduced or terminated or
24 have a percentage of the credit amount previously claimed under
25 this section added back to the tax liability of the taxpayer in the
26 tax year that the taxpayer or assignee fails to comply with this
27 section.

1 (7) ~~(6)~~ A ~~qualified~~ taxpayer may assign all or a portion of a
2 credit allowed under this section. A credit assignment under this
3 subsection is irrevocable and shall be made in the tax year in
4 which a certificate is issued. However, a ~~qualified~~ taxpayer may
5 also convey the right to obtain an assignment of the credit under
6 this section after an agreement has been approved by the Michigan
7 economic growth authority and before a certificate has been issued.
8 A ~~qualified~~ taxpayer may claim a portion of a credit and assign the
9 remaining credit amount. The credit assignment under this
10 subsection shall be made on a form prescribed by the Michigan
11 economic growth authority. The Michigan economic growth authority
12 or its designee shall review and issue a completed assignment
13 certificate to the assignee. An assignee shall attach a copy of the
14 completed assignment certificate to its annual return required
15 under this act, for the tax year in which the assignment is made
16 and the assignee first claims a credit, which shall be the same tax
17 year. In addition to all other procedures and requirements under
18 this section, the following apply:

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

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 (8) ~~(7)~~ A taxpayer that has entered into an agreement with the

1 Michigan economic growth authority for a credit under sections 432
2 through 432d is not eligible for the credit under this section.

3 (9) ~~(8)~~—As used in this section:

4 (a) "Capital investment" means the cost, including fabrication
5 and installation, paid or accrued in the tax year of property of a
6 type that is, or under the internal revenue code will become,
7 eligible for depreciation, amortization, or accelerated capital
8 cost recovery for federal income tax purposes, provided that the
9 property is physically located in this state for use in a business
10 activity in this state.

11 (B) **"ELIGIBLE TAXPAYER" MEANS A TAXPAYER THAT HAS ENTERED AN**
12 **AGREEMENT TO CREATE AT LEAST 250 QUALIFIED NEW JOBS AND TO MAKE AT**
13 **LEAST \$100,000,000.00 IN A QUALIFIED CAPITAL INVESTMENT OF WHICH**
14 **\$25,000,000.00 SHALL BE MADE PRIOR TO THE ISSUANCE OF A CERTIFICATE**
15 **UNDER THIS SECTION.**

16 (C) ~~(b)~~—"Full-time job" means a job performed by an individual
17 for 35 hours or more each week and whose income and social security
18 taxes are withheld by 1 or more of the following:

19 (i) A qualified taxpayer **OR AN ELIGIBLE TAXPAYER.**

20 (ii) An employee leasing company on behalf of a qualified
21 taxpayer **OR AN ELIGIBLE TAXPAYER.**

22 (iii) A professional employer organization on behalf of a
23 qualified taxpayer **OR AN ELIGIBLE TAXPAYER.**

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

27 (E) ~~(d)~~—"Qualified new job" means a full-time job created by a

1 qualified taxpayer **OR AN ELIGIBLE TAXPAYER** at a facility or
2 facilities that is in excess of the number of full-time jobs a
3 qualified taxpayer **OR AN ELIGIBLE TAXPAYER** maintained in this state
4 or at a facility prior to the expansion or location, as determined
5 by the authority.

6 (F) ~~(e)~~—"Qualified taxpayer" means a taxpayer that has entered
7 an agreement to create at least ~~700~~—500 qualified new jobs and to
8 make at least \$50,000,000.00 in a qualified capital investment of
9 which \$25,000,000.00 shall be made prior to the issuance of a
10 certificate under this section.

11 (G) ~~(f)~~—"Photovoltaic cells" means an integrated device
12 consisting of layers of semiconductor materials and electric
13 constructs capable of converting incident light directly into
14 electricity.

15 (H) ~~(g)~~—"Photovoltaic energy" means solar energy.

16 (I) ~~(h)~~—"Photovoltaic modules" means an assembly of
17 interconnected photovoltaic cells.

18 (J) ~~(i)~~—"Photovoltaic systems" means solar energy devices
19 composed of 1 or more photovoltaic cells or photovoltaic modules,
20 and inverter or other power conditioning unit or photovoltaic
21 technology designed to deliver power of a selected current and
22 voltage, wires, and other electrical connectors in order to
23 generate electricity, heat or cool a residential structure, provide
24 hot water for use in a residential structure, or provide solar
25 process heat. Batteries for power storage may also be included in
26 photovoltaic systems.

27 (K) ~~(j)~~—"Photovoltaic technology" means solar power technology

1 that uses photovoltaic cells and modules to convert light from the
2 sun directly into electricity. Photovoltaic technology includes
3 equipment, component parts, materials, electronic devices, testing
4 equipment, and other related systems that are specifically designed
5 or fabricated and used primarily for 1 or more of the following:

6 (i) The storage, generation, reformation, or distribution of
7 clean fuels integrated within a photovoltaic system.

8 (ii) The process of utilizing photovoltaic energy to generate
9 electricity for use by consumers.

10 (l) ~~(k)~~ "Property" means section 1245 property and section 1250
11 property as those terms are defined in sections 1245 and 1250 of
12 the internal revenue code.