

Act No. 90
Public Acts of 2009
Approved by the Governor
September 11, 2009
Filed with the Secretary of State
September 11, 2009
EFFECTIVE DATE: September 11, 2009

STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009

Introduced by Reps. Clemente, Scripps, Angerer, Ball, Barnett, Bolger, Lisa Brown, Terry Brown, Byrnes, Caul, Denby, Durhal, Espinoza, Geiss, Gonzales, Griffin, Haase, Haugh, Horn, Johnson, Robert Jones, Kandrevas, Kennedy, Lemmons, Lipton, Liss, Mayes, Melton, Meltzer, Polidori, Proos, Rocca, Segal, Sheltroun, Simpson, Slavens, Slezak, Spade, Stamas, Valentine and Warren

ENROLLED HOUSE BILL No. 4523

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 430 (MCL 208.1430), as added by 2008 PA 270.

The People of the State of Michigan enact:

Sec. 430. (1) Except as otherwise provided under subsection (3) and subject to the limitations under subsection (2), for tax years that begin on or after January 1, 2009, a qualified taxpayer and an eligible taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will construct and operate in this state a new facility for development and manufacturing of photovoltaic energy, photovoltaic systems, or other photovoltaic technology may claim a credit against the tax imposed by this act equal to 25% of the capital investments made by the taxpayer in that new facility 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 December 31, 2011. The total amount of credits allowed under this section for all tax years shall not exceed \$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) Except as otherwise provided under this subsection, the credit allowed under this section shall be taken by a 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) 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 the development and manufacturing of photovoltaic energy, photovoltaic systems, or other photovoltaic technology and 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 the development and manufacturing of photovoltaic energy, photovoltaic systems, or other photovoltaic technology.

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

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

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

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

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

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

(8) A taxpayer that has entered into an agreement with the Michigan economic growth authority for a credit under sections 432 through 432d is not eligible for the credit under this section.

(9) As used in this section:

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

(b) "Eligible taxpayer" means a taxpayer that has entered an agreement to create at least 250 qualified new jobs and to make at least \$100,000,000.00 in a qualified capital investment of which \$25,000,000.00 shall be made prior to the issuance of a certificate under this section.

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

(i) A qualified taxpayer or an eligible taxpayer.

(ii) An employee leasing company on behalf of a qualified taxpayer or an eligible taxpayer.

(iii) A professional employer organization on behalf of a qualified taxpayer or an eligible taxpayer.

(d) "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.

(e) "Qualified new job" means a full-time job created by a qualified taxpayer or an eligible taxpayer at a facility or facilities that is in excess of the number of full-time jobs a qualified taxpayer or an eligible taxpayer maintained in this state or at a facility prior to the expansion or location, as determined by the authority.

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

(g) "Photovoltaic cells" means an integrated device consisting of layers of semiconductor materials and electric constructs capable of converting incident light directly into electricity.

(h) "Photovoltaic energy" means solar energy.

(i) "Photovoltaic modules" means an assembly of interconnected photovoltaic cells.

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

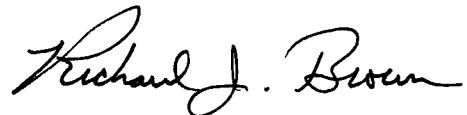
(k) "Photovoltaic technology" means solar power technology that uses photovoltaic cells and modules to convert light from the sun directly into electricity. Photovoltaic technology includes equipment, component parts, materials, electronic devices, testing equipment, and other related systems that are specifically designed or fabricated and used primarily for 1 or more of the following:

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

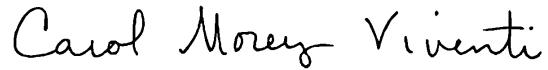
(ii) The process of utilizing photovoltaic energy to generate electricity for use by consumers.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor