

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 855

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 107, 117, 434, 500, 510, and 511 (MCL
208.1107, 208.1117, 208.1434, 208.1500, 208.1510, and 208.1511),
sections 107, 117, and 500 as amended by 2011 PA 209, section 434
as amended by 2010 PA 114, and section 510 as amended by 2011 PA
77.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 107. (1) "Certificated credit" means any of the
2 following:
3 (a) A tax voucher certificate that has been issued to a
4 taxpayer under an agreement entered into before January 1, 2012
5 under section 419 or section 23 of the Michigan early stage venture

1 investment act of 2003, 2003 PA 296, MCL 125.2253.

2 (b) A credit for which a preapproval letter has been issued to
3 a qualified taxpayer under section 437 before January 1, 2012 to
4 the extent the credit has not been fully claimed or paid prior to
5 January 1, 2012.

6 (c) A—**EXCEPT AS OTHERWISE PROVIDED UNDER SUBDIVISION (I), A**
7 credit **OR VOUCHER CERTIFICATE** for which a taxpayer or a qualified
8 taxpayer has entered into an agreement with the Michigan economic
9 growth authority under sections 430, 431, 431a, 431b, 431c, 432,
10 434, or 450 before January 1, 2012 to the extent the credit **OR**
11 **VOUCHER CERTIFICATE** has not been fully claimed or paid prior to
12 January 1, 2012.

13 (d) A credit for which a taxpayer or eligible production
14 company has entered into an agreement with the Michigan film office
15 with the concurrence of the state treasurer under section 455 or
16 457 before January 1, 2012 to the extent the credit has not been
17 fully claimed or paid before January 1, 2012.

18 (e) A credit for which a qualified taxpayer has received a
19 part 2 approval, approved rehabilitation plan, approved high
20 community impact rehabilitation plan, or preapproval letter from
21 the state historic preservation office under section 435 before
22 January 1, 2012 to the extent the credit has not been fully claimed
23 or paid before January 1, 2012.

24 (f) A credit under section 433 but only for a taxpayer that
25 has a development agreement executed between a taxpayer and the
26 Michigan strategic fund before January 1, 2012 or for a taxpayer
27 that has entered into a qualified collaborative agreement under the

1 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
2 125.2696, before January 1, 2012. As used in this subsection,
3 "qualified collaborative agreement" means that term as defined in
4 section 8d of the Michigan renaissance zone act, 1996 PA 376, MCL
5 125.2688d.

6 (g) A credit applicable to this act granted under section
7 36109 of the natural resources and environmental protection act,
8 1994 PA 451, MCL 324.36109.

9 (h) A credit allowed a taxpayer under section 409 if the
10 taxpayer has met the capital expenditure requirements under section
11 409(4).

12 **(I) A CREDIT FOR WHICH A TAXPAYER HAS ENTERED INTO AN**
13 **AGREEMENT WITH THE MICHIGAN ECONOMIC GROWTH AUTHORITY UNDER SECTION**
14 **434(6) BEFORE JULY 1, 2012.**

15 (2) "Client" means an entity whose employment operations are
16 managed by a professional employer organization.

17 (3) "Compensation" means all wages, salaries, fees, bonuses,
18 commissions, other payments made in the tax year on behalf of or
19 for the benefit of employees, officers, or directors of the
20 taxpayers, and any earnings that are net earnings from self-
21 employment as defined under section 1402 of the internal revenue
22 code of the taxpayer or a partner or limited liability company
23 member of the taxpayer. Compensation includes, but is not limited
24 to, payments that are subject to or specifically exempt or excepted
25 from withholding under sections 3401 to 3406 of the internal
26 revenue code. Compensation also includes, on a cash or accrual
27 basis consistent with the taxpayer's method of accounting for

1 federal income tax purposes, payments to a pension, retirement, or
2 profit sharing plan other than those payments attributable to
3 unfunded accrued actuarial liabilities, and payments for insurance
4 for which employees are the beneficiaries, including payments under
5 health and welfare and noninsured benefit plans and payment of fees
6 for the administration of health and welfare and noninsured benefit
7 plans. Compensation for a taxpayer licensed under article 25 or 26
8 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and
9 339.2601 to 339.2637, includes payments to an independent
10 contractor licensed under article 25 or 26 of the occupational
11 code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to
12 339.2637. Compensation does not include any of the following:

13 (a) Discounts on the price of the taxpayer's merchandise or
14 services sold to the taxpayer's employees, officers, or directors
15 that are not available to other customers.

16 (b) Except as otherwise provided in this subsection, payments
17 to an independent contractor.

18 (c) Payments to state and federal unemployment compensation
19 funds.

20 (d) The employer's portion of payments under the federal
21 insurance contributions act, chapter 21 of subtitle C of the
22 internal revenue code, 26 USC 3101 to 3128, the railroad retirement
23 tax act, chapter 22 of subtitle C of the internal revenue code, 26
24 USC 3201 to 3233, and similar social insurance programs.

25 (e) Payments, including self-insurance payments, for worker's
26 compensation insurance or federal employers' liability act
27 insurance pursuant to 45 USC 51 to 60.

1 (4) "Corporation" means a taxpayer that is required or has
2 elected to file as a corporation under the internal revenue code.

3 (5) "Department" means the department of treasury.

4 Sec. 117. (1) "Tangible personal property" means that term as
5 defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

6 (2) "Tax" means the tax imposed under this act, including
7 interest and penalties under this act, unless the term is given a
8 more limited meaning in the context of this act or a provision of
9 this act.

10 (3) "Tax-exempt person" means an organization that is exempt
11 from federal income tax under section 501(a) of the internal
12 revenue code, and a partnership, limited liability company, joint
13 venture, unincorporated association, or other group or combination
14 of organizations acting as a unit if all such organizations are
15 exempt from federal income tax under section 501(a) of the internal
16 revenue code and if all activities of the unit are exclusively
17 related to the charitable, educational, or other purposes or
18 functions that are the basis for the exemption of such
19 organizations from federal income tax, except the following:

20 (a) An organization exempt under section 501(c)(12) or (16) of
21 the internal revenue code.

22 (b) An organization exempt under section 501(c)(4) of the
23 internal revenue code that would be exempt under section 501(c)(12)
24 of the internal revenue code but for its failure to meet the
25 requirement in section 501(c)(12) that 85% or more of its income
26 must consist of amounts collected from members.

27 (4) "Tax year" means the calendar year, or the fiscal year

1 ending during the calendar year, upon the basis of which the tax
2 base of a taxpayer is computed under this act. If a return is made
3 for a fractional part of a year, tax year means the period for
4 which the return is made. Except for the first return required by
5 this act and except as otherwise provided under this subsection, a
6 taxpayer's tax year is for the same period as is covered by its
7 federal income tax return. A taxpayer that has a 52- or 53-week tax
8 year beginning not more than 7 days before December 31 of any year
9 is considered to have a tax year beginning after December of that
10 tax year. If the term tax year in this act is used in reference to
11 1 or more previous or preceding tax years and those referenced tax
12 years are before January 1, 2008, then those referenced tax years
13 are deemed those same tax years during which former 1975 PA 228 was
14 in effect. A taxpayer that has a fiscal tax year ending after
15 December 31, 2011 is considered to have 2 separate tax years as
16 follows: the first tax year is for the fractional part of the
17 fiscal tax year before January 1, 2012, and the second tax year is
18 for the fractional part of the fiscal tax year after December 31,
19 2011. Each short period tax return filed for each fractional part
20 of the fiscal year pursuant to this subsection is considered an
21 annual return under section 505.

22 (5) "Taxpayer" means, through December 31, 2011, a person or a
23 unitary business group liable for a tax, interest, or penalty under
24 this act. Beginning January 1, 2012, taxpayer means either of the
25 following:

26 (a) A person or unitary business group that has been approved
27 to receive, has received, or has been assigned a certificated

1 credit but is not subject to the tax imposed under part 2 of the
2 income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, and
3 that elects under section 500 to file a return and pay the tax
4 imposed under this act, if any.

5 (b) A person or unitary business group that has been approved
6 to receive, has received, or has been assigned a certificated
7 credit and that elected under section 680 of the income tax act of
8 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax
9 imposed under this act, if any. ~~If~~**EXCEPT AS OTHERWISE PROVIDED**

10 **UNDER SECTION 500(7), IF** a person or unitary business group that
11 elects under section 680 of the income tax act of 1967, 1967 PA
12 281, MCL 206.680, to file a return and pay the tax imposed under
13 this act is part of a unitary business group as defined under this
14 act, the unitary business group as defined under this act shall
15 file the return and pay the tax, if any, under this act.

16 (6) "Unitary business group" means a group of United States
17 persons, other than a foreign operating entity, 1 of which owns or
18 controls, directly or indirectly, more than 50% of the ownership
19 interest with voting rights or ownership interests that confer
20 comparable rights to voting rights of the other United States
21 persons, and that has business activities or operations which
22 result in a flow of value between or among persons included in the
23 unitary business group or has business activities or operations
24 that are integrated with, are dependent upon, or contribute to each
25 other. For purposes of this subsection, flow of value is determined
26 by reviewing the totality of facts and circumstances of business
27 activities and operations.

1 (7) "United States person" means that term as defined in
2 section 7701(a)(30) of the internal revenue code.

3 (8) "Unrelated business activity" means, for a tax-exempt
4 person, business activity directly connected with an unrelated
5 trade or business as defined in section 513 of the internal revenue
6 code.

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

17 (2) Subject to the limitations provided under this section,
18 for tax years that begin on or after January 1, 2010 and end before
19 January 1, 2015, a taxpayer that has entered into an agreement with
20 the Michigan economic growth authority that provides that the
21 taxpayer will manufacture plug-in traction battery packs in this
22 state may claim a credit against the tax imposed by this act for
23 the manufacture of those plug-in traction battery packs as provided
24 in this section. The Michigan economic growth authority may enter
25 into more than 1 agreement under this section. However, the total
26 number of plug-in traction battery packs eligible for all credits
27 under all agreements allowed under this section shall not exceed

1 the number of plug-in traction battery packs eligible for a credit
2 as provided in this section and at least 1 agreement shall make
3 capital investments of not less than \$200,000,000.00 not later than
4 December 31, 2012. A taxpayer shall not claim a credit under this
5 section for more than 3 years. The total of all credits allowed
6 under this section shall be as follows:

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

16 (b) For tax years beginning after December 31, 2011 and ending
17 before January 1, 2013, \$375.00 for an equivalent of 4 kilowatt
18 hours of battery capacity plus \$93.75 for each kilowatt hour of
19 battery capacity in excess of 4 kilowatt hours of battery capacity
20 not to exceed \$1,500.00 for each plug-in traction battery pack. The
21 total number of traction battery packs shall not exceed 40,000
22 plug-in traction battery pack units under this subdivision, and the
23 total amount of credits allowed under this subdivision shall not
24 exceed \$43,000,000.00. A single taxpayer shall not claim a credit
25 for more than 25,000 plug-in traction battery pack units under this
26 subdivision. The number of battery pack units not used for credits
27 under subdivision (a) may be added to the total number of battery

1 pack units for which a credit is available under this subdivision,
2 and the credits for those units shall be calculated as described in
3 subdivision (a) and shall be in addition to the maximums allowed
4 for any 1 taxpayer under this subdivision or the total limits
5 allowed under this subdivision.

6 (c) For tax years beginning after December 31, 2012 and ending
7 before January 1, 2014, \$375.00 for an equivalent of 4 kilowatt
8 hours of battery capacity plus \$93.75 for each kilowatt hour of
9 battery capacity in excess of 4 kilowatt hours not to exceed
10 \$1,500.00 for each plug-in traction battery pack. The total number
11 of traction battery packs shall not exceed 40,000 plug-in traction
12 battery pack units under this subdivision, and the total amount of
13 credits allowed under this subdivision shall not exceed
14 \$43,000,000.00. A single taxpayer shall not claim a credit for more
15 than 25,000 plug-in traction battery pack units under this
16 subdivision.

17 (d) For tax years beginning after December 31, 2013 and ending
18 before January 1, 2015, \$375.00 for an equivalent of 4 kilowatt
19 hours of battery capacity plus \$93.75 for each kilowatt hour of
20 battery capacity in excess of 4 kilowatt hours not to exceed
21 \$1,500.00 for each plug-in traction battery pack. The total number
22 of traction battery packs shall not exceed 25,000 plug-in traction
23 battery pack units under this subdivision, and the total amount of
24 credits allowed under this subdivision shall not exceed
25 \$9,000,000.00.

26 (3) For tax years that begin on or after January 1, 2012 and
27 subject to the limitations of this subsection, a taxpayer may claim

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

17 (a) In a tax year in which the taxpayer has manufactured a
18 cumulative total of at least 1,000 motor vehicles and fewer than
19 2,000 motor vehicles that qualify for the credit under section 30D
20 of the internal revenue code, 20%.

21 (b) In a tax year in which the taxpayer has manufactured a
22 cumulative total of at least 2,000 motor vehicles but fewer than
23 3,000 motor vehicles that qualify for the credit under section 30D
24 of the internal revenue code, 40%.

25 (c) In a tax year in which the taxpayer has manufactured a
26 cumulative total of at least 3,000 motor vehicles but fewer than
27 4,000 motor vehicles that qualify for the credit under section 30D

1 of the internal revenue code, 60%.

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

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

9 (4) For tax years that begin on or after January 1, 2012 and
10 end before January 1, 2015, a taxpayer that has entered into an
11 agreement with the Michigan economic growth authority that provides
12 that the taxpayer will increase its engineering activities in this
13 state for advanced automotive battery technologies may claim a
14 credit under this subsection. A taxpayer's qualified advanced
15 battery engineering expenses for advanced automotive battery
16 technologies shall exceed those expenses for the taxpayer's 2008
17 fiscal year to qualify for the credit under this subsection. The
18 Michigan economic growth authority may enter into not more than 1
19 agreement for advanced battery engineering credits, and the total
20 value of credits available under this subsection is limited to
21 \$30,000,000.00. The credits under this subsection shall be allowed
22 as follows:

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

1 amount of qualified advanced battery engineering expenses for each
2 year.

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

6 (c) The credits available under this subsection shall not be
7 allowed if the taxpayer claims credits under subsection (2) for
8 battery pack assembly for the tax year. Notwithstanding this
9 limitation, the credits available under this subsection are in
10 addition to any other incentives which may be authorized under the
11 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
12 207.810, for other related or unrelated projects including the
13 vehicle research and development expenses authorized under
14 subsection (3). Any expenses for which a credit is claimed under
15 this subsection shall not be included in costs and expenses used
16 for credits available under sections 403 and 405.

17 (5) ~~A-EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 500(7), A~~
18 taxpayer that has entered into an agreement with the Michigan
19 economic growth authority may claim a credit equal to 50% of the
20 capital investment expenses for any tax year for the construction
21 of an integrative cell manufacturing facility that includes anode
22 and cathode manufacturing and cell assembly if the taxpayer will
23 create not less than 300 new jobs in this state. Not more than 5
24 agreements may be entered into under this section, and the maximum
25 allowable credit under each agreement shall not exceed
26 \$25,000,000.00 per year for no more than 4 years. No credit shall
27 be claimed in a tax year beginning before 2012. However, tax

1 credits may be based on expenses incurred in this state in prior
2 years. The Michigan economic growth authority shall not adopt a
3 resolution authorizing an agreement to provide credits under this
4 subsection after March 31, 2010.

5 (6) ~~A~~ **SUBJECT TO THE LIMITATIONS UNDER THIS SUBSECTION, A**
6 taxpayer that has entered into an agreement with the Michigan
7 economic growth authority may claim a credit equal to 25% of the
8 capital investment expenses for any tax year for the construction
9 of a facility that will produce ~~large scale batteries and~~
10 ~~manufacture integrated power management, smart control, and storage~~
11 ~~systems from 500 kilowatts to 100 megawatts~~ **AT LEAST 1 OR MORE OF**
12 **THE FOLLOWING: BATTERIES, BATTERY COMPONENTS, STORAGE SYSTEMS,**
13 **BATTERY THERMAL AND MANAGEMENT COMPONENTS OR SYSTEMS, AC OR DC**
14 **POWER SUPPLIES, POWER ELECTRONICS, BATTERY FORMATION AND TEST**
15 **EQUIPMENT, OR ENERGY CONVERSION DEVICES INCLUDING COMPONENTS**
16 **RELATED TO SUCH PRODUCTS OF VARIOUS SIZES AND CAPACITIES** if the
17 taxpayer ~~will~~ **AGREES TO** create not fewer than ~~500~~ **750** new jobs in
18 this state. ~~and the taxpayer has received conventional financing,~~
19 ~~recovery zone facility bonds, or federal loan guarantees for a~~
20 ~~project that employs innovative energy efficiency, renewable~~
21 ~~energy, and advanced transmission and distribution technologies~~
22 ~~from the United States department of energy under section 1703 of~~
23 ~~title XVII of the energy policy act of 2005, 42 USC 16513.~~ Not more
24 than 1 agreement may be entered into under this subsection **FOR A**
25 **TOTAL CREDIT OF NOT MORE THAN \$50,000,000.00 OVER 4 YEARS,** and the
26 maximum allowable credit under the agreement shall not exceed
27 \$25,000,000.00 per year. ~~for no more than 4 years.~~ No credit shall

1 be claimed in a tax year beginning before 2012. The Michigan
2 economic growth authority shall not adopt a resolution authorizing
3 an agreement to provide a credit under this subsection after ~~March~~
4 ~~1, 2010.~~ **JUNE 30, 2012.**

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

12 (a) For a taxpayer that agrees to make capital investments in
13 this state of not less than \$250,000,000.00, to create at least
14 1,000 new jobs that shall include jobs that are transferred to this
15 state from a foreign country, and to manufacture not less than
16 225,000 advanced lithium ion battery packs in this state, a total
17 credit of not more than \$26,000,000.00 per tax year for no more
18 than 3 tax years. The Michigan economic growth authority shall not
19 adopt a resolution authorizing an agreement under this subdivision
20 after March 1, 2010.

21 (b) For a taxpayer that agrees to make capital investments in
22 this state of not less than \$200,000,000.00 and to create at least
23 300 new jobs, a total credit of not more than \$42,000,000.00 over 4
24 consecutive tax years unless otherwise provided under subsection
25 (10). Unless the Michigan economic growth authority determines that
26 there are previously issued credits authorized under subsection (6)
27 available or that there are credits available under subsection

1 (7)(a) for additional credits under this subdivision, the Michigan
2 economic growth authority shall not adopt a resolution authorizing
3 an agreement under this subdivision after March 1, 2010.

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

21 (9) Subject to the limitations of this subsection, if the
22 Michigan economic growth authority determines that there are
23 previously issued credits authorized under subsection (6)
24 available, then for tax years that begin on or after January 1,
25 2015 and end before January 1, 2017 a taxpayer may claim a credit
26 of up to 75% of the costs incurred during each tax year that begins
27 on or after January 1, 2013 and ends before January 1, 2016 to

1 implement a sourcing program to utilize battery cells from a
2 business that has entered into an agreement under subsection (5)
3 for the construction of an integrative cell manufacturing facility.
4 Costs eligible for the credit under this subsection shall include
5 payments for battery pack and vehicle engineering and associated
6 design or integration including prototyping, facility, equipment or
7 component retooling, and vehicle regulatory certification and shall
8 include costs such as direct labor, purchases of capital equipment
9 at cost, expensed supplies, intellectual property licensing,
10 services, and financing, as determined and certified by the
11 Michigan economic growth authority. Any costs for which a credit is
12 claimed under this subsection shall not be included in costs and
13 expenses used for credits available under sections 403 and 405. The
14 Michigan economic growth authority may enter into more than 1
15 agreement under this subsection. The Michigan economic growth
16 authority shall not authorize more than an amount equal to 25% of
17 the previously issued credits available under subsection (6) as
18 determined under subsection (10) in total credits to all taxpayers
19 under this subsection. A single taxpayer shall not claim a credit
20 of more than \$12,500,000.00 per year for no more than 2 years. To
21 claim the credit under this subsection, a taxpayer must manufacture
22 at least 10,000 motor vehicles in each year a credit is claimed at
23 a facility in this state at which some of the costs eligible for a
24 credit under this subsection are or were incurred. An agreement
25 entered into under this subsection shall contain a repayment
26 provision that if the taxpayer relocates its battery pack assembly
27 facility for which credits are taken under subsection (7) outside

1 of this state during the term of the agreement or subsequently
2 substantially fails to meet the requirements of the agreement, as
3 determined by the Michigan economic growth authority, the taxpayer
4 shall have its credit reduced or terminated or have a percentage of
5 the amount previously claimed under this subsection added back to
6 the tax liability of the taxpayer in the year that the taxpayer
7 fails to comply with the agreement.

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

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

26 (b) The authority determined at a meeting upon a vote of the
27 majority of the members present that the credits previously

1 authorized satisfy subdivision (a).

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

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

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

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

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

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

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

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

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

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

16 (i) The location of the facility.

17 (ii) The estimated total cost of the facility.

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

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

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

1 the taxpayer fails to comply with the agreement.

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

4 (i) The location of the facility.

5 (ii) The estimated total cost of the facility.

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

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

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

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

19 **(vii) A PROVISION THAT, IF THE TAXPAYER FAILS TO CREATE 750 NEW**
20 **JOBS, THE TAXPAYER SHALL HAVE ITS CREDIT REDUCED BY \$65,000.00 FOR**
21 **EACH JOB LESS THAN 750 THAT WAS NOT CREATED AND, IF THE TAXPAYER**
22 **FAILS TO CREATE AT LEAST 500 NEW JOBS, A PROVISION REGARDING AN**
23 **ADDITIONAL CLAWBACK OF ANY CREDIT OR BENEFIT RECEIVED PURSUANT TO**
24 **THE AGREEMENT.**

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

27 (i) A provision that the taxpayer agrees to make a good faith

1 effort to utilize Michigan suppliers and vendors when purchasing
2 components and services related to the production of advanced
3 lithium ion battery packs for which a credit is claimed in the
4 2012, 2013, and 2014 tax years. For a credit during the 2015 and
5 2016 tax years, a provision that the taxpayer shall utilize cells
6 from a business that has entered into an agreement under subsection
7 (5) for the construction of an integrative cell manufacturing
8 facility.

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

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

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

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(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) FOR PROJECT AGREEMENTS CREATED UNDER SUBSECTION (6) BEFORE JULY 1, 2012 AND FOR PROJECT AGREEMENTS AMENDED AFTER DECEMBER 1, 2011 BUT BEFORE JULY 1, 2012 UNDER SUBSECTION (5), THE MICHIGAN STRATEGIC FUND SHALL REPORT TO THE CHAIR AND MINORITY VICE-CHAIR OF THE HOUSE AND SENATE SUBCOMMITTEES ON GENERAL GOVERNMENT, THE HOUSE COMMERCE COMMITTEE, AND THE SENATE ECONOMIC DEVELOPMENT COMMITTEE ANNUALLY BEGINNING JANUARY 1, 2014 AND EVERY JANUARY 1 THEREAFTER, AND ENDING WITH A FINAL REPORT ON JANUARY 1, 2020. THE REPORT SHALL DETAIL EACH OF THE PROJECTS INDIVIDUALLY AND SHALL SEPARATELY LIST DIRECT JOBS CREATED, DIRECT

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REVENUE CREATED, INDIRECT JOBS CREATED, AND INDIRECT REVENUE CREATED FOR
EACH OF THOSE PROJECTS.]

26 [~~15~~—(16)] As used in this section:

27 (a) "Advanced automotive battery technology" means a

1 rechargeable lithium battery that supports vehicle propulsion or
2 other advanced technologies as may be further defined by the
3 Michigan economic growth authority.

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

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

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

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

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

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

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

27 (iii) Consists of standardized configuration and is mass-

1 produced.

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

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

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

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

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

24 Sec. 500. (1) Except as otherwise provided in subsection (2)
25 OR (7), a taxpayer described under section 117(5)(a) or under
26 section 680 of the income tax act of 1967, 1967 PA 281, MCL
27 206.680, that voluntarily elects for the taxpayer's first tax year

1 ending after December 31, 2011 to file a return and pay the tax
2 imposed by this act in order to claim a certificated credit or any
3 unused carryforward for that tax year shall continue to file a
4 return and pay the tax imposed under this act for each tax year
5 thereafter until that certificated credit and any carryforward from
6 that credit is used up. ~~If~~**EXCEPT AS OTHERWISE PROVIDED UNDER**
7 **SUBSECTION (7), IF** a person awarded a certificated credit is a
8 member of a unitary business group, the unitary business group, and
9 not the member, shall file a return and pay the tax, if any, under
10 this act and claim the certificated credit. ~~If~~**EXCEPT AS OTHERWISE**
11 **PROVIDED UNDER SUBSECTION (7), IF** the taxpayer that elects to file
12 a return and pay the tax imposed by this act in order to claim a
13 certificated credit or any unused carryforward of that credit for
14 that tax year is a unitary business group, the return filed by the
15 unitary business group shall include all persons included in the
16 unitary business group regardless of whether that person is
17 incorporated.

18 (2) A taxpayer with a certificated credit under section 435 or
19 437, which certificated credit or any unused carryforward may be
20 claimed in a tax year ending after December 31, 2011 may elect to
21 pay the tax imposed by this act in the tax year in which that
22 certificated credit may be claimed in lieu of the tax imposed under
23 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to
24 206.713. If a person with a certificated credit under section 435
25 or 437 that elects under this subsection to pay the tax imposed by
26 this act is a member of a unitary business group, the unitary
27 business group, and not the member, shall file a return and pay the

1 tax, if any, under this act and claim that certificated credit.

2 (3) A taxpayer with a certificated credit under section 435 or
3 437 that elects under subsection (2) after the taxpayer's first tax
4 year ending after December 31, 2011 to pay the tax imposed by this
5 act may claim any other certificated credit that taxpayer would be
6 eligible for in the year in which the taxpayer claims a
7 certificated credit under section 435 or 437, but not any
8 certificated credit that would have accrued in any year before the
9 election under subsection (2). A taxpayer with a certificated
10 credit under section 437(10) that elects under subsection (2) after
11 the taxpayer's first tax year after December 31, 2011 to pay the
12 tax imposed by this act shall continue to file a return and pay the
13 tax imposed under this act for each tax year thereafter until the
14 certificated credit under section 437(10) is complete and that
15 credit is used up. When the taxpayer's certificated credit under
16 section 435 or 437 that was the basis for the taxpayer's election
17 under subsection (2) is extinguished, the taxpayer is no longer
18 eligible to pay the tax under this act and may no longer claim any
19 other remaining certificated credits.

20 (4) For tax years that begin after December 31, 2011, a
21 taxpayer's tax liability under this act, after application of all
22 credits, deductions, and exemptions, shall be the greater of the
23 following:

24 (a) The amount of the taxpayer's tax liability under this act,
25 notwithstanding the calculation required under this section, after
26 application of all credits, deductions, and exemptions and any
27 carryforward of any unused credit as prescribed in this act.

1 (b) An amount equal to the taxpayer's tax liability as
2 computed pursuant to part 2 of the income tax act of 1967, 1967 PA
3 281, MCL 206.601 to 206.713, after application of all credits,
4 deductions, and exemptions under part 2 of the income tax act of
5 1967, 1967 PA 281, MCL 206.601 to 206.713, as if the taxpayer were
6 subject to the tax imposed under part 2 of the income tax act of
7 1967, 1967 PA 281, MCL 206.601 to 206.713, less the amount of the
8 taxpayer's certificated credits, including any unused carryforward
9 of a certificated credit, that the taxpayer was allowed to claim
10 for the tax year under this act. However, in calculating the amount
11 under this subdivision, the following apply:

12 (i) A taxpayer described under section 117(5)(a) shall not
13 include a deduction for any business loss under section 623(4) of
14 the income tax act of 1967, 1967 PA 281, MCL 206.623, for any prior
15 year in which the taxpayer was not subject to the tax levied under
16 this act.

17 (ii) A taxpayer shall not include any nonrefundable
18 certificated credit to the extent that credit exceeds the
19 taxpayer's tax liability. Any nonrefundable credit remaining after
20 application of the limitation in this subparagraph may be carried
21 forward.

22 (iii) For a taxpayer that is a partnership or S corporation,
23 business income includes payments and items of income and expense
24 that are attributable to business activity of the partnership or S
25 corporation and separately reported to the members.

26 (5) If the result of the calculation under subsection (4) is
27 negative, the taxpayer shall be refunded that amount.

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(6) A taxpayer with a certificated credit under **SUBSECTION (7)** OR section 435 or 437 that elects to pay the tax under this act may elect to claim a refundable credit as provided under section 510. If a refundable credit is claimed under section 510, that credit shall not be used to calculate a taxpayer's tax liability under subsection (4).

(7) **SUBJECT TO THE LIMITATIONS PROVIDED UNDER THIS SUBSECTION, A TAXPAYER THAT IS A MEMBER OF A UNITARY BUSINESS GROUP [AND] THAT HAS A CERTIFICATED CREDIT UNDER SECTIONS 431 AND 434(2) AND (5) [**

] IS NOT REQUIRED TO FILE A COMBINED RETURN AS A UNITARY BUSINESS GROUP AND MAY ELECT TO FILE A SEPARATE RETURN AND PAY THE TAX, IF ANY, UNDER THIS ACT AND CLAIM THE CERTIFICATED CREDIT UNDER SECTION 434(5) AS PROVIDED UNDER THIS SUBSECTION. A TAXPAYER THAT ELECTS TO FILE A SEPARATE RETURN AS PROVIDED UNDER THIS SUBSECTION AND REDEEM A VOUCHER CERTIFICATE UNDER A VOUCHER AGREEMENT ENTERED PURSUANT TO THIS SUBSECTION AND PROCEEDING FROM AN AGREEMENT ENTERED PURSUANT TO SECTION 434(5) FOR AN AMOUNT EQUAL TO THE EMPLOYMENT EXPENSES AND RELATED ENGINEERING PRODUCT DEVELOPMENT AND ADMINISTRATIVE COSTS FOR THE SUPPORT OF INTEGRATED BATTERY CELLS, ANODES AND CATHODES, AND CELL ASSEMBLY SHALL CREATE AN ADDITIONAL 100 NEW JOBS IN THIS STATE, FOR A TOTAL OF 400 NEW JOBS, AND THE MAXIMUM ALLOWABLE AMOUNT REDEEMED UNDER THIS SUBSECTION OR UNDER SECTION 510 SHALL NOT EXCEED \$25,000,000.00 PER YEAR FOR NO MORE THAN 3 YEARS. A TAXPAYER THAT ELECTS TO FILE AS PROVIDED UNDER THIS

1 SUBSECTION AND REDEEM A VOUCHER CERTIFICATE UNDER A VOUCHER
2 AGREEMENT ENTERED PURSUANT TO THIS SUBSECTION AND PROCEEDING FROM
3 AN AGREEMENT ENTERED PURSUANT TO SECTION 434(5) SHALL NOT CLAIM A
4 CREDIT FOR ANY AGREEMENT ENTERED PURSUANT TO SECTION 431 OR 434(2).

5 Sec. 510. (1) If a certificate of completion, assignment
6 certificate, or component completion certificate is issued for a
7 tax year beginning after December 31, 2011 under section 437 to a
8 taxpayer or if a certificate of completed rehabilitation,
9 assignment certificate, or reassignment certificate is issued for a
10 tax year beginning after December 31, 2011 under section 435 to a
11 taxpayer, beginning on and after January 1, 2012 the taxpayer may
12 elect to claim a refundable credit for 90% of the amount of that
13 certificate. The claim may be filed before the end of the tax year,
14 and the department shall pay the refundable credit within 60 days
15 after receiving the claim. A taxpayer claiming a credit under this
16 section shall forgo the remaining 10% of the credit.

17 (2) If section 437 or 435 provides that payment of a credit
18 will be made over a period of years or limits the annual amount of
19 a payment, a refundable credit may only be claimed under subsection
20 (1) for the amount payable in the year claimed. A taxpayer may
21 elect to claim a refundable credit under subsection (1) in each
22 year that a credit is payable under section 437 or 435.
23 Notwithstanding the foregoing, a taxpayer may elect under
24 subsection (1) to claim the balance of a refundable credit awarded
25 under section 435(20), but the amount of that refund shall be equal
26 to 86% of the amount of the credit and the taxpayer shall forgo the
27 remaining 14% of the credit.

1 (3) Notwithstanding the provisions of section 437(18) and
2 section 435(9), for tax years ending after December 31, 2011, a
3 taxpayer may not claim a refundable credit under section 437(18) or
4 section 435(9) and may only claim a refundable credit under
5 sections 437 and 435 as provided in subsection (1) or (2).

6 **(4) IF A VOUCHER CERTIFICATE IS ISSUED FOR A TAX YEAR**
7 **BEGINNING AFTER DECEMBER 31, 2011 UNDER SECTION 500(7) TO A**
8 **TAXPAYER, BEGINNING ON AND AFTER JANUARY 1, 2012 THE TAXPAYER MAY**
9 **ELECT TO REDEEM A REFUNDABLE VOUCHER CERTIFICATE SUBJECT ONLY TO**
10 **THE ANNUAL LIMITATIONS AND CONDITIONS PROVIDED UNDER SECTION**
11 **500(7). THE CLAIM MAY BE FILED BEFORE THE END OF THE TAX YEAR, AND**
12 **THE DEPARTMENT SHALL PAY THE REFUNDABLE CERTIFICATE WITHIN 60 DAYS**
13 **AFTER RECEIVING THE CLAIM.**

14 Sec. 511. ~~A~~**EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 500(7),**
15 **A** unitary business group shall file a combined return that includes
16 each United States person, other than a foreign operating entity,
17 that is included in the unitary business group. Each United States
18 person included in a unitary business group or included in a
19 combined return shall be treated as a single person and all
20 transactions between those persons included in the unitary business
21 group shall be eliminated from the business income tax base,
22 modified gross receipts tax base, and the apportionment formula
23 under this act. If a United States person included in a unitary
24 business group or included in a combined return is subject to the
25 tax under chapter 2A or 2B, any business income attributable to
26 that person shall be eliminated from the business income tax base,
27 any modified gross receipts attributable to that person shall be

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1 eliminated from the modified gross receipts tax base, and any sales
2 attributable to that person shall be eliminated from the
3 apportionment formula under this act.

4 Enacting section 1. This amendatory act takes effect January
5 1, 2012.

[Enacting section 2. It is the intent of the legislature that the
\$75,000,000.00 savings realized in reduced credits allowed under section
434(5) and (6) of the Michigan business tax act, 2007 PA 36, MCL
208.1434, as a result of this amendatory act shall be passed on and
utilized to replace any revenue lost due to any personal property tax
reform.]