

HOUSE BILL NO. 4712

April 22, 2021, Introduced by Reps. Berman and Steckloff and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 437 (MCL 208.1437), as amended by 2017 PA 217.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 437. (1) Subject to the criteria under this section, a
2 qualified taxpayer that has unused credits or has a preapproval
3 letter issued after December 31, 2007 and before January 1, 2014,
4 or a taxpayer that received a preapproval letter prior to January
5 1, 2008 under section 38g of former 1975 PA 228 and has not

1 received a certificate of completion prior to the taxpayer's last
2 tax year, provided that the project is completed not more than 5
3 years after the preapproval letter for the project is issued unless
4 extended under subsection (9) **or (34)** or if it is a multiphase
5 project not more than 10 years after the preapproval letter, as
6 amended, if applicable, for the project is issued, or an assignee
7 under subsection (20), (21), or (22) may claim a credit that has
8 been approved under section 38g of former 1975 PA 228 or under
9 subsection (2), (3), or (4) against the tax imposed by this act
10 equal to either of the following:

11 (a) For projects approved before April 8, 2008, if the total
12 of all credits for a project is \$1,000,000.00 or less, 10% of the
13 cost of the qualified taxpayer's eligible investment paid or
14 accrued by the qualified taxpayer on an eligible property provided
15 that the project does not exceed the amount stated in the
16 preapproval letter, as amended. For projects approved, or amended,
17 on and after April 8, 2008, if the total of all eligible
18 investments for a project are \$10,000,000.00 or less, up to 12.5%
19 of the costs of the qualified taxpayer's eligible investment paid
20 or accrued by the qualified taxpayer on an eligible property or up
21 to 15% of the costs of the qualified taxpayer's eligible investment
22 paid or accrued by the qualified taxpayer on an eligible property
23 if the project is designated as an urban development area project
24 by the Michigan economic growth authority to the extent that the
25 project does not exceed the amount stated in the preapproval
26 letter, as amended, or, until December 31, 2010, up to 20% of the
27 costs of the qualified taxpayer's eligible investment paid or
28 accrued by the qualified taxpayer on an eligible property if the
29 project is designated as an urban development area project by the

1 Michigan economic growth authority. If eligible investment exceeds
2 the amount of eligible investment in the preapproval letter, as
3 amended, for that project, the total of all credits for the project
4 shall not exceed the total of all credits on the certificate of
5 completion.

6 (b) For projects approved before April 8, 2008, if the total
7 of all credits for a project is more than \$1,000,000.00 but
8 \$30,000,000.00 or less and, except as provided in subsection
9 (6)(b), the project is located in a qualified local governmental
10 unit, a percentage as determined by the Michigan economic growth
11 authority not to exceed 10% of the cost of the qualified taxpayer's
12 eligible investment as determined under subsection (11) paid or
13 accrued by the qualified taxpayer on an eligible property. For
14 projects approved, or amended, on and after April 8, 2008 and
15 before January 1, 2010, if the total of all eligible investments
16 for a project is more than \$10,000,000.00 but \$300,000,000.00 or
17 less, up to 12.5% of the costs of the qualified taxpayer's eligible
18 investment as determined under subsection (11) paid or accrued by
19 the qualified taxpayer on an eligible property that, except as
20 provided in subsection (6)(b), is located in a qualified local
21 governmental unit, up to 15% of the cost of the qualified
22 taxpayer's eligible investment as determined under subsection (11)
23 paid or accrued by the qualified taxpayer on an eligible property
24 if the project is designated as an urban development area project
25 by the Michigan economic growth authority, or, until December 31,
26 2010, up to 20% of the costs of the qualified taxpayer's eligible
27 investment as determined under subsection (11) paid or accrued by
28 the qualified taxpayer on an eligible property if the project is
29 designated as an urban development area project by the Michigan

1 economic growth authority. For projects approved, or amended, on
2 and after January 1, 2010, if the total of all eligible investments
3 for a project is more than \$10,000,000.00 but \$100,000,000.00 or
4 less, up to 12.5% of the costs of the qualified taxpayer's eligible
5 investment as determined under subsection (11) paid or accrued by
6 the qualified taxpayer on an eligible property that, except as
7 provided in subsection (6)(b), is located in a qualified local
8 governmental unit, up to 15% of the cost of the qualified
9 taxpayer's eligible investment as determined under subsection (11)
10 paid or accrued by the qualified taxpayer on an eligible property
11 if the project is designated as an urban development area project
12 by the Michigan economic growth authority, or, until December 31,
13 2010, up to 20% of the costs of the qualified taxpayer's eligible
14 investment as determined under subsection (11) paid or accrued by
15 the qualified taxpayer on an eligible property if the project is
16 designated as an urban development area project by the Michigan
17 economic growth authority. If eligible investment exceeds the
18 amount of eligible investment in the preapproval letter, as
19 amended, for that project, the total of all credits for the project
20 shall not exceed the total of all credits on the certificate of
21 completion **except as authorized under subsection (34)**.

22 (2) If the cost of a project will be \$2,000,000.00 or less, a
23 qualified taxpayer shall apply to the Michigan economic growth
24 authority for approval of the project under this subsection. An
25 application under this subsection shall state whether the project
26 is a multiphase project. Subject to the limitation provided under
27 subsection (31), the chairperson of the Michigan economic growth
28 authority or his or her designee is authorized to approve an
29 application or project under this subsection. Only the chairperson

1 of the Michigan economic growth authority is authorized to deny an
2 application or project under this subsection. A project shall be
3 approved or denied not more than 45 days after receipt of the
4 application. If the chairperson of the Michigan economic growth
5 authority or his or her designee does not approve or deny the
6 application within 45 days after the application is received by the
7 Michigan economic growth authority, the application is considered
8 approved as written. If the chairperson of the Michigan economic
9 growth authority or his or her designee approves a project under
10 this subsection, the chairperson of the Michigan economic growth
11 authority or his or her designee shall issue a preapproval letter
12 that states that the taxpayer is a qualified taxpayer; the maximum
13 total eligible investment for the project on which credits may be
14 claimed and the maximum total of all credits for the project when
15 the project is completed and a certificate of completion is issued;
16 and the project number assigned by the Michigan economic growth
17 authority. If a project is denied under this subsection, a taxpayer
18 is not prohibited from subsequently applying under this subsection
19 for the same project or for another project. The Michigan economic
20 growth authority shall develop and implement the use of the
21 application form to be used for projects under this subsection.

22 (3) If the cost of a project will be for more than
23 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer
24 shall apply to the Michigan economic growth authority for approval
25 of the project under this subsection. An application under this
26 subsection shall state whether the project is a multiphase project.
27 Subject to the limitation provided under subsection (31), the
28 chairperson of the Michigan economic growth authority or his or her
29 designee is authorized to approve an application or project under

1 this subsection. Only the chairperson of the Michigan economic
2 growth authority is authorized to deny an application or project
3 under this subsection. A project shall be approved or denied not
4 more than 45 days after receipt of the application. If the
5 chairperson of the Michigan economic growth authority or his or her
6 designee does not approve or deny an application within 45 days
7 after the application is received by the Michigan economic growth
8 authority, the application is considered approved as written. The
9 criteria in subsection (7) shall be used when approving projects
10 under this subsection. When approving projects under this
11 subsection, priority shall be given to projects on a facility. The
12 total of all credits for an approved project under this subsection
13 shall not exceed the amounts authorized under subsection (1)(a). A
14 taxpayer may apply under this subsection instead of subsection (4)
15 for approval of a project that will be for more than
16 \$10,000,000.00, but the total of all credits for that project shall
17 not exceed the amounts authorized under subsection (1)(a). If the
18 chairperson of the Michigan economic growth authority or his or her
19 designee approves a project under this subsection, the chairperson
20 of the Michigan economic growth authority or his or her designee
21 shall issue a preapproval letter that states that the taxpayer is a
22 qualified taxpayer; the maximum total eligible investment for the
23 project on which credits may be claimed and the maximum total of
24 all credits for the project when the project is completed and a
25 certificate of completion is issued; and the project number
26 assigned by the Michigan economic growth authority. If a project is
27 denied under this subsection, a taxpayer is not prohibited from
28 subsequently applying under this subsection or subsection (4) for
29 the same project or for another project.

1 (4) If the cost of a project will be for more than
2 \$10,000,000.00 and, except as provided in subsection (6) (b), the
3 project is located in a qualified local governmental unit, a
4 qualified taxpayer shall apply to the Michigan economic growth
5 authority for approval of the project. An application under this
6 subsection shall state whether the project is a multiphase project.
7 The Michigan economic growth authority shall approve or deny the
8 project not more than 65 days after receipt of the application. A
9 project under this subsection shall not be approved without the
10 concurrence of the state treasurer. If the Michigan economic growth
11 authority does not approve or deny the application within 65 days
12 after it receives the application, the Michigan economic growth
13 authority shall send the application to the state treasurer. The
14 state treasurer shall approve or deny the application within 5 days
15 after receipt of the application. If the state treasurer does not
16 deny the application within 5 days after receipt of the
17 application, the application is considered approved. The Michigan
18 economic growth authority shall approve a limited number of
19 projects under this subsection during each calendar year as
20 provided in subsection (6). The Michigan economic growth authority
21 shall use the criteria in subsection (7) when approving projects
22 under this subsection, when determining the total amount of
23 eligible investment, and when determining the percentage of
24 eligible investment for the project to be used to calculate a
25 credit. The total of all credits for an approved project under this
26 subsection shall not exceed the amount designated in the
27 preapproval letter, as amended, for that project. If the Michigan
28 economic growth authority approves a project under this subsection,
29 the Michigan economic growth authority shall issue a preapproval

1 letter that states that the taxpayer is a qualified taxpayer; the
2 percentage of eligible investment for the project determined by the
3 Michigan economic growth authority for purposes of subsection
4 (1) (b); the maximum total eligible investment for the project on
5 which credits may be claimed and the maximum total of all credits
6 for the project when the project is completed and a certificate of
7 completion is issued; and the project number assigned by the
8 Michigan economic growth authority. The Michigan economic growth
9 authority shall send a copy of the preapproval letter to the
10 department. If a project is denied under this subsection, a
11 taxpayer is not prohibited from subsequently applying under this
12 subsection or subsection (3) for the same project or for another
13 project.

14 (5) If the project is on property that is functionally
15 obsolete, the taxpayer shall include with the application an
16 affidavit signed by a level 3 or level 4 assessor, that states that
17 it is the assessor's expert opinion that the property is
18 functionally obsolete and the underlying basis for that opinion.

19 (6) The Michigan economic growth authority may approve not
20 more than 20 projects each calendar year through December 31, 2009,
21 not more than 19 projects for the 2010 calendar year, and, except
22 as otherwise provided under subdivision (d), not more than 17
23 projects for each calendar year after December 31, 2010 under
24 subsection (4), and the following limitations apply:

25 (a) Of the projects allowed under this subsection, the total
26 of all credits for each project may be more than \$10,000,000.00 but
27 \$30,000,000.00 or less for only 1 project before December 31, 2009.

28 (b) Of the projects allowed under this subsection, up to 3
29 projects may be approved for projects that are not in a qualified

1 local governmental unit if the property is a facility for which
2 eligible activities are identified in a brownfield plan or, for 1
3 of the 3 projects, if the property is not a facility but is
4 functionally obsolete or blighted, property identified in a
5 brownfield plan. For purposes of this subdivision, a facility
6 includes a building or complex of buildings that was used by a
7 state or federal agency and that is no longer being used for the
8 purpose for which it was used by the state or federal agency.

9 (c) The project allowed under subdivision (a) may also qualify
10 under subdivision (b).

11 (d) If the Michigan economic growth authority determines that
12 there are previously issued credits authorized under section 434(6)
13 available, the Michigan economic growth authority may approve 2
14 additional projects for each calendar year after December 31, 2010.
15 As used in this subdivision, "previously issued credits" means the
16 total amount of credits authorized by the Michigan economic growth
17 authority for a taxpayer under section 434(6) that meets all of the
18 following:

19 (i) The taxpayer did not use any or a portion of the credits
20 authorized under the written agreement under section 434(6).

21 (ii) The authority determined at a meeting upon a vote of the
22 majority of the members present that the credits previously
23 authorized satisfy subparagraph (i).

24 (7) The Michigan economic growth authority shall review all
25 applications for projects under subsection (4) and, if an
26 application is approved, shall determine the maximum total of all
27 credits for that project. Before approving a project for which the
28 total of all credits will be more than \$10,000,000.00 but
29 \$30,000,000.00 or less only, the Michigan economic growth authority

1 shall determine that the project would not occur in this state
2 without the tax credit offered under subsection (4). The Michigan
3 economic growth authority shall consider the following criteria to
4 the extent reasonably applicable to the type of project proposed
5 when approving a project under subsection (4), and the chairperson
6 of the Michigan economic growth authority or his or her designee
7 shall consider the following criteria to the extent reasonably
8 applicable to the type of project proposed when approving a project
9 under subsection (2) or (3) or when considering an amendment to a
10 project under subsection (9):

11 (a) The overall benefit to the public.

12 (b) The extent of reuse of vacant buildings and redevelopment
13 of blighted property.

14 (c) Creation of jobs.

15 (d) Whether the eligible property is in an area of high
16 unemployment.

17 (e) The level and extent of contamination alleviated by the
18 qualified taxpayer's eligible activities to the extent known to the
19 qualified taxpayer.

20 (f) The level of private sector contribution.

21 (g) The cost gap that exists between the site and a similar
22 greenfield site as determined by the Michigan economic growth
23 authority.

24 (h) If the qualified taxpayer is moving from another location
25 in this state, whether the move will create a brownfield.

26 (i) Whether the project is financially and economically sound.

27 (j) Any other criteria that the Michigan economic growth
28 authority or the chairperson of the Michigan economic growth
29 authority, as applicable, considers appropriate for the

1 determination of eligibility under subsection (3) or (4).

2 (8) A qualified taxpayer may apply for projects under this
3 section for eligible investment on more than 1 eligible property in
4 a tax year. Each project approved and each project for which a
5 certificate of completion is issued under this section shall be for
6 eligible investment on 1 eligible property.

7 (9) If, after a taxpayer's project has been approved and the
8 taxpayer has received a preapproval letter but before the taxpayer
9 has made an eligible investment, other than soft costs **or as**
10 **otherwise authorized under subsection (34)**, at the property, the
11 taxpayer determines that the project cannot be completed as
12 preapproved, the taxpayer may petition the Michigan economic growth
13 authority to amend the project and the preapproval letter to
14 increase the maximum total eligible investment for the project on
15 which credits may be claimed and the maximum total of all credits
16 for the project. A taxpayer may petition the Michigan economic
17 growth authority to make any other amendments to the project or
18 preapproval letter at any time before a certificate of completion
19 is issued. ~~Amendments~~ **Except as otherwise provided under subsection**
20 **(34), amendments** to the project or preapproval letter may include,
21 but are not limited to, extending the duration of time provided to
22 complete the project, as long as that extension does not exceed 10
23 years from the date of the preapproval letter. However, if a
24 project was approved prior to December 31, 2008 for 20% of the
25 qualified taxpayer's eligible investment and a total of less than
26 \$2,000,000.00 for all credits for that project and that project has
27 received a funding reservation for an allocation of the federal
28 low-income housing tax credit administered by the Michigan state
29 housing development authority of more than \$1,100,000.00, then that

1 project may be amended to extend the duration of time provided to
2 complete the project to the placed-in-service date of the carryover
3 allocation agreement for the federal low-income housing tax credit.

4 (10) A project may be a multiphase project. If a project is a
5 multiphase project, when each component of the multiphase project
6 is completed, the taxpayer shall submit documentation that the
7 component is complete, an accounting of the cost of the component,
8 and the eligible investment for the component of each taxpayer
9 eligible for a credit for the project of which the component is a
10 part to the Michigan economic growth authority or the designee of
11 the Michigan economic growth authority, who shall verify that the
12 component is complete. When the completion of the component is
13 verified, a component completion certificate shall be issued to the
14 qualified taxpayer which shall state that the taxpayer is a
15 qualified taxpayer, the credit amount for the component, the
16 qualified taxpayer's federal employer identification number or the
17 Michigan treasury number assigned to the taxpayer, and the project
18 number. The taxpayer may assign all or part of the credit for a
19 multiphase project as provided in this section after a component
20 completion certificate for a component is issued. The qualified
21 taxpayer may transfer ownership of or lease the completed component
22 and assign a proportionate share of the credit for the entire
23 project to the qualified taxpayer that is the new owner or lessee.
24 A multiphase project shall not be divided into more than 10
25 components. A component is considered to be completed when a
26 certificate of occupancy has been issued by the local municipality
27 in which the project is located for all of the buildings or
28 facilities that comprise the completed component and a component
29 completion certificate is issued or the chairperson of the Michigan

1 economic growth authority or his or her designee, for projects
2 approved under subsection (2) or (3), or the Michigan economic
3 growth authority, for projects approved under subsection (4),
4 verifies that the component is complete. A credit assigned based on
5 a multiphase project shall be claimed by the assignee in the tax
6 year in which the assignment is made. The total of all credits for
7 a multiphase project shall not exceed the amount stated in the
8 preapproval letter, as amended, for the project under subsection
9 (1). If all components of a multiphase project are not completed by
10 10 years after the date on which the preapproval letter, as
11 amended, if applicable, for the project was issued, the qualified
12 taxpayer that received the preapproval letter for the project shall
13 pay to the state treasurer, as a penalty, an amount equal to the
14 sum of all credits claimed and assigned for all components of the
15 multiphase project and no credits based on that multiphase project
16 shall be claimed after that date by the qualified taxpayer or any
17 assignee of the qualified taxpayer. The penalty under this
18 subsection is subject to interest on the amount of the credit
19 claimed or assigned determined individually for each component at
20 the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on
21 the date that the credit for that component was claimed or
22 assigned. As used in this subsection, "proportionate share" means
23 the same percentage of the total of all credits for the project
24 that the qualified investment for the completed component is of the
25 total qualified investment stated in the preapproval letter, as
26 amended, for the entire project.

27 (11) When a project under this section is completed, the
28 taxpayer shall submit documentation that the project is completed,
29 an accounting of the cost of the project, the eligible investment

1 of each taxpayer if there is more than 1 taxpayer eligible for a
2 credit for the project, and, if the taxpayer is not the owner or
3 lessee of the eligible property on which the eligible investment
4 was made at the time the project is completed, that the taxpayer
5 was the owner or lessee of, or was a party to an agreement to
6 purchase or lease, that eligible property when all eligible
7 investment of the taxpayer was made. The chairperson of the
8 Michigan economic growth authority or his or her designee, for
9 projects approved under subsection (2) or (3), or the Michigan
10 economic growth authority, for projects approved under subsection
11 (4), shall verify that the project is completed. The Michigan
12 economic growth authority shall conduct an on-site inspection as
13 part of the verification process for projects approved under
14 subsection (4). When the completion of the project is verified, a
15 certificate of completion shall be issued to each qualified
16 taxpayer that has made eligible investment on that eligible
17 property. The certificate of completion shall state the total
18 amount of all credits for the project and that total shall not
19 exceed the maximum total of all credits listed in the preapproval
20 letter for the project under subsection (2), (3), or (4) as
21 applicable and as amended under subsection (9) **or (34)** and shall
22 state all of the following:

- 23 (a) That the taxpayer is a qualified taxpayer.
24 (b) The total cost of the project and the eligible investment
25 of each qualified taxpayer.
26 (c) Each qualified taxpayer's credit amount.
27 (d) The qualified taxpayer's federal employer identification
28 number or the Michigan treasury number assigned to the taxpayer.
29 (e) The project number.

1 (f) For a project approved under subsection (4) for which the
2 total of all credits is more than \$10,000,000.00 but \$30,000,000.00
3 or less, the total of all credits and the schedule on which the
4 annual credit amount shall be claimed by the qualified taxpayer.

5 (g) For a multiphase project under subsection (10), the amount
6 of each credit assigned and the amount of all credits claimed in
7 each tax year before the year in which the project is completed.

8 (12) Except as otherwise provided in this section, qualified
9 taxpayers shall claim credits under this section in the tax year in
10 which the certificate of completion is issued. For a project
11 approved under subsection (4) for which the total of all credits is
12 more than \$10,000,000.00 but \$30,000,000.00 or less, the qualified
13 taxpayer shall claim 10% of its approved credit each year for 10
14 years. A credit assigned based on a multiphase project shall be
15 claimed in the year in which the credit is assigned.

16 (13) The cost of eligible investment for leased machinery,
17 equipment, or fixtures is the cost of that property had the
18 property been purchased minus the lessor's estimate, made at the
19 time the lease is entered into, of the market value the property
20 will have at the end of the lease. A credit for property described
21 in this subsection is allowed only if the cost of that property had
22 the property been purchased and the lessor's estimate of the market
23 value at the end of the lease are provided to the Michigan economic
24 growth authority.

25 (14) Credits claimed by a lessee of eligible property are
26 subject to the total of all credits limitation under this section.

27 (15) Each qualified taxpayer and assignee under subsection
28 (20), (21), or (22) that claims a credit under this section shall
29 attach a copy of the certificate of completion and, if the credit

1 was assigned, a copy of the assignment form provided for under this
2 section to the annual return filed under this act on which the
3 credit under this section is claimed. An assignee of a credit based
4 on a multiphase project shall attach a copy of the assignment form
5 provided for under this section and the component completion
6 certificate provided for in subsection (10) to the annual return
7 filed under this act on which the credit is claimed but is not
8 required to file a copy of a certificate of completion.

9 (16) Except as otherwise provided in this subsection or
10 subsection (10), (18), (20), (21), or (22), a credit under this
11 section shall be claimed in the tax year in which the certificate
12 of completion is issued to the qualified taxpayer. For a project
13 described in subsection (11)(f) for which a schedule for claiming
14 annual credit amounts is designated on the certificate of
15 completion by the Michigan economic growth authority, the annual
16 credit amount shall be claimed in the tax year specified on the
17 certificate of completion.

18 (17) Except as otherwise provided under this subsection, the
19 credits approved under this section shall be calculated after
20 application of all other credits allowed under this act. The
21 credits under this section shall be calculated before the
22 calculation of the credits under sections 413, 423, 431, and 450.

23 (18) Except as otherwise provided under this subsection, if
24 the credit allowed under this section for the tax year and any
25 unused carryforward of the credit allowed under this section exceed
26 the qualified taxpayer's or assignee's tax liability for the tax
27 year, that portion that exceeds the tax liability for the tax year
28 shall not be refunded but may be carried forward to offset tax
29 liability in subsequent tax years for 10 years or until used up,

1 whichever occurs first. Except as otherwise provided in this
2 subsection, the maximum time allowed under the carryforward
3 provisions under this subsection begins with the tax year in which
4 the certificate of completion is issued to the qualified taxpayer.
5 If the qualified taxpayer assigns all or any portion of its credit
6 approved under this section, the maximum time allowed under the
7 carryforward provisions for an assignee begins to run with the tax
8 year in which the assignment is made and the assignee first claims
9 a credit, which shall be the same tax year. The maximum time
10 allowed under the carryforward provisions for an annual credit
11 amount for a credit allowed under subsection (4) begins to run in
12 the tax year for which the annual credit amount is designated on
13 the certificate of completion issued under this section. A credit
14 carryforward available under section 38g of former 1975 PA 228 that
15 is unused at the end of the last tax year may be claimed against
16 the tax imposed under this act for the years the carryforward would
17 have been available under former 1975 PA 228. Beginning on and
18 after April 8, 2008, if the credit allowed under this section for
19 the tax year exceeds the qualified taxpayer's tax liability for the
20 tax year, the qualified taxpayer may elect to have the excess
21 refunded at a rate equal to 85% of that portion of the credit that
22 exceeds the tax liability of the qualified taxpayer for the tax
23 year and forgo the remaining 15% of the credit and any
24 carryforward.

25 (19) If a project or credit under this section is for the
26 addition of personal property, if the cost of that personal
27 property is used to calculate a credit under this section, and if
28 the personal property is disposed of or transferred from the
29 eligible property to any other location, the qualified taxpayer

1 that disposed of that property, or transferred the personal
2 property shall add the same percentage as determined under
3 subsection (1) of the federal basis of the personal property used
4 for determining gain or loss as of the date of the disposition or
5 transfer to the qualified taxpayer's tax liability under this act
6 after application of all credits under this act for the tax year in
7 which the disposition or transfer occurs. If a qualified taxpayer
8 has an unused carryforward of a credit under this section, the
9 amount otherwise added under this subsection to the qualified
10 taxpayer's tax liability may instead be used to reduce the
11 qualified taxpayer's carryforward under subsection (18).

12 (20) For credits under this section for projects for which a
13 certificate of completion is issued before January 1, 2006 and
14 except as otherwise provided in this subsection, if a qualified
15 taxpayer pays or accrues eligible investment on or to an eligible
16 property that is leased for a minimum term of 10 years or sold to
17 another taxpayer for use in a business activity, the qualified
18 taxpayer may assign all or a portion of the credit under this
19 section based on that eligible investment to the lessee or
20 purchaser of that eligible property. A credit assignment under this
21 subsection shall only be made to a taxpayer that when the
22 assignment is complete will be a qualified taxpayer. All credit
23 assignments under this subsection are irrevocable and, except for a
24 credit based on a multiphase project, shall be made in the tax year
25 in which the certificate of completion is issued, unless the
26 assignee is an unknown lessee. If a qualified taxpayer wishes to
27 assign all or a portion of its credit to a lessee but the lessee is
28 unknown in the tax year in which the certificate of completion is
29 issued, the qualified taxpayer may delay claiming and assigning the

1 credit until the first tax year in which the lessee is known. A
2 qualified taxpayer may claim a portion of a credit and assign the
3 remaining credit amount. Except as otherwise provided in this
4 subsection, if the qualified taxpayer both claims and assigns
5 portions of the credit, the qualified taxpayer shall claim the
6 portion it claims in the tax year in which the certificate of
7 completion is issued or, for a credit assigned and claimed for a
8 multiphase project before a certificate of completion is issued,
9 the taxpayer shall claim the credit in the year in which the credit
10 is assigned. If a qualified taxpayer assigns all or a portion of
11 the credit and the eligible property is leased to more than 1
12 taxpayer, the qualified taxpayer shall determine the amount of
13 credit assigned to each lessee. A lessee shall not subsequently
14 assign a credit or any portion of a credit assigned under this
15 subsection. A purchaser may subsequently assign a credit or any
16 portion of a credit assigned to the purchaser under this subsection
17 to a lessee of the eligible property. The credit assignment under
18 this subsection shall be made on a form prescribed by the Michigan
19 economic growth authority. The qualified taxpayer shall send a copy
20 of the completed assignment form to the Michigan economic growth
21 authority in the tax year in which the assignment is made. The
22 assignee shall attach a copy of the completed assignment form to
23 its annual return required to be filed under this act, for the tax
24 year in which the assignment is made and the assignee first claims
25 a credit, which shall be the same tax year. In addition to all
26 other procedures under this subsection, the following apply if the
27 total of all credits for a project is more than \$10,000,000.00 but
28 \$30,000,000.00 or less:

29 (a) The credit shall be assigned based on the schedule

1 contained in the certificate of completion.

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

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

8 (d) The qualified taxpayer shall not assign more than the
9 annual credit amount for each tax year.

10 (21) Except as otherwise provided in this subsection, for
11 projects for which a certificate of completion is issued before
12 January 1, 2006, and except as otherwise provided in this
13 subsection, if a qualified taxpayer is a partnership, limited
14 liability company, or subchapter S corporation, the qualified
15 taxpayer may assign all or a portion of a credit under this section
16 to its partners, members, or shareholders, based on their
17 proportionate share of ownership of the partnership, limited
18 liability company, or subchapter S corporation or based on an
19 alternative method approved by the Michigan economic growth
20 authority. A credit assignment under this subsection is irrevocable
21 and, except for a credit assignment based on a multiphase project,
22 shall be made in the tax year in which a certificate of completion
23 is issued. A qualified taxpayer may claim a portion of a credit and
24 assign the remaining credit amount. Except as otherwise provided in
25 this subsection, if the qualified taxpayer both claims and assigns
26 portions of the credit, the qualified taxpayer shall claim the
27 portion it claims in the tax year in which a certificate of
28 completion is issued or for a credit assigned and claimed for a
29 multiphase project, before the component completion certificate is

1 issued, the taxpayer shall claim the credit in the year in which
2 the credit is assigned. A partner, member, or shareholder that is
3 an assignee shall not subsequently assign a credit or any portion
4 of a credit assigned under this subsection. The credit assignment
5 under this subsection shall be made on a form prescribed by the
6 Michigan economic growth authority. The qualified taxpayer shall
7 send a copy of the completed assignment form to the Michigan
8 economic growth authority in the tax year in which the assignment
9 is made. A partner, member, or shareholder who is an assignee shall
10 attach a copy of the completed assignment form to its annual return
11 required under this act, for the tax year in which the assignment
12 is made and the assignee first claims a credit, which shall be the
13 same tax year. A credit assignment based on a credit for a
14 component of a multiphase project that is completed before January
15 1, 2006 shall be made under this subsection. In addition to all
16 other procedures under this subsection, the following apply if the
17 total of all credits for a project is more than \$10,000,000.00 but
18 \$30,000,000.00 or less:

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

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 (d) The qualified taxpayer shall not assign more than the
28 annual credit amount for each tax year.

29 (22) For projects approved under this section or section 38g

1 of former 1975 PA 228 for which a certificate of completion is
2 issued on and after January 1, 2006, a qualified taxpayer may
3 assign all or a portion of a credit allowed under this section or
4 section 38g(2), (3), or (33) of former 1975 PA 228 under this
5 subsection. A credit assignment under this subsection is
6 irrevocable and, except for a credit assignment based on a
7 multiphase project, shall be made in the tax year in which a
8 certificate of completion is issued unless the assignee is an
9 unknown lessee. If a qualified taxpayer wishes to assign all or a
10 portion of its credit to a lessee but the lessee is unknown in the
11 tax year in which the certificate of completion is issued, the
12 qualified taxpayer may delay claiming and assigning the credit
13 until the first tax year in which the lessee is known. A qualified
14 taxpayer may claim a portion of a credit and assign the remaining
15 credit amount. If the qualified taxpayer both claims and assigns
16 portions of the credit, the qualified taxpayer shall claim the
17 portion it claims in the tax year in which a certificate of
18 completion is issued pursuant to this section or section 38g of
19 former 1975 PA 228. An assignee may subsequently assign a credit or
20 any portion of a credit assigned under this subsection to 1 or more
21 assignees. The credit assignment or a subsequent reassignment under
22 this subsection shall be made on a form prescribed by the Michigan
23 economic growth authority. The Michigan economic growth authority
24 or its designee shall review and issue a completed assignment or
25 reassignment certificate to the assignee or reassignee. An assignee
26 or subsequent reassignee shall attach a copy of the completed
27 assignment certificate to its annual return required under this
28 act, for the tax year in which the assignment or reassignment is
29 made and the assignee or reassignee first claims a credit, which

1 shall be the same tax year. A credit assignment based on a credit
2 for a component of a multiphase project that is completed before
3 January 1, 2006 shall be made under section 38g(18) of former 1975
4 PA 228. A credit assignment based on a credit for a component of a
5 multiphase project that is completed on or after January 1, 2006
6 may be made under this section. In addition to all other procedures
7 and requirements under this section, the following apply if the
8 total of all credits for a project is more than \$10,000,000.00 but
9 \$30,000,000.00 or less:

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

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

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

18 (23) A qualified taxpayer or assignee under subsection (20),
19 (21), or (22) shall not claim a credit under subsection (1)(a) or
20 (b) based on eligible investment on which a credit claimed under
21 section 38d of former 1975 PA 228 was based.

22 (24) When reviewing an application for a project for
23 designation as an urban development area project, the Michigan
24 economic growth authority for projects approved under subsection
25 (4) or the chairperson of the Michigan economic growth authority or
26 his or her designee for projects approved under subsections (2) and
27 (3) shall consider all of the following criteria:

28 (a) If the project increases the density of the area by
29 promoting multistory development.

1 (b) If the project promotes mixed-use development and walkable
2 communities.

3 (c) If the project promotes sustainable redevelopment.

4 (d) If the project addresses areawide redevelopment and
5 includes multiple parcels of property.

6 (e) If the project addresses underserved markets of commerce.

7 (f) Any other criteria determined by the Michigan economic
8 growth authority or the chairperson of the Michigan economic growth
9 authority.

10 (25) An eligible taxpayer that claims a credit under this
11 section is not prohibited from claiming a credit under section 431.
12 However, the eligible taxpayer shall not claim a credit under this
13 section and section 431 based on the same costs.

14 (26) Eligible investment attributable or related to the
15 operation of a professional sports stadium, and eligible investment
16 that is associated or affiliated with the operation of a
17 professional sports stadium, including, but not limited to, the
18 operation of a parking lot or retail store, shall not be used as a
19 basis for a credit under this section. Professional sports stadium
20 does not include a professional sports stadium that will no longer
21 be used by a professional sports team on and after the date that an
22 application related to that professional sports stadium is filed
23 under this section.

24 (27) Eligible investment attributable or related to the
25 operation of a casino, and eligible investment that is associated
26 or affiliated with the operation of a casino, including, but not
27 limited to, the operation of a parking lot, hotel, motel, or retail
28 store, shall not be used as a basis for a credit under this
29 section. As used in this subsection, "casino" means a casino

1 regulated by this state pursuant to the Michigan ~~gaming control~~
2 **Gaming Control** and ~~revenue act,~~ **Revenue Act**, 1996 IL 1, MCL 432.201
3 to 432.226.

4 (28) Eligible investment attributable or related to the
5 construction of a new landfill or the expansion of an existing
6 landfill regulated under part 115 of the natural resources and
7 environmental protection act, 1994 PA 451, MCL 324.11501 to
8 324.11554, shall not be used as a basis for a credit under this
9 section.

10 (29) The Michigan economic growth authority annually shall
11 prepare and submit to the house of representatives and senate
12 committees responsible for tax policy and economic development
13 issues a report on the credits under subsections (2), (3), and (4).
14 The report shall include, but is not limited to, all of the
15 following:

16 (a) A listing of the projects under subsections (2), (3), and
17 (4) that were approved in the calendar year.

18 (b) The total amount of eligible investment for projects
19 approved under subsections (2), (3), and (4) in the calendar year.

20 (30) For purposes of this section, taxpayer includes a person
21 subject to the tax imposed under chapters 2A and 2B.

22 (31) For the 2008 calendar year, the total of all credits for
23 all projects approved under subsection (2) or (3) shall not exceed
24 \$63,000,000.00. For each calendar year after 2008, the total of all
25 credits for all projects approved under subsection (2) or (3) shall
26 not exceed \$40,000,000.00. If the Michigan economic growth
27 authority approves a total of all credits for all projects under
28 subsection (2) or (3) of less than \$40,000,000.00 in a calendar
29 year, the Michigan economic growth authority may carry forward for

1 1 year only the difference between \$40,000,000.00 and the total of
2 all credits for all projects under this subsection approved in the
3 immediately preceding calendar year.

4 (32) As used in this section:

5 (a) "Annual credit amount" means the maximum amount that a
6 qualified taxpayer is eligible to claim each tax year for a project
7 for which the total of all credits is more than \$10,000,000.00 but
8 \$30,000,000.00 or less, as approved under subsection (4).

9 (b) "Authority" means a brownfield redevelopment authority
10 created under the brownfield redevelopment financing act, 1996 PA
11 381, MCL 125.2651 to ~~125.2672~~-**125.2670**.

12 (c) "Blighted", "brownfield plan", "eligible activities",
13 "facility", "functionally obsolete", "qualified local governmental
14 unit", and "response activity" mean those terms as defined in the
15 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
16 to ~~125.2672~~-**125.2670**.

17 (d) "Eligible investment" or "eligible investments" means,
18 when made after the approval date of the brownfield plan but in any
19 event no earlier than 90 days prior to the date of the preapproval
20 letter, any demolition, construction, restoration, alteration,
21 renovation, or improvement of buildings or site improvements on
22 eligible property and the addition of machinery, equipment, and
23 fixtures to eligible property after the date that eligible
24 activities on that eligible property have started pursuant to a
25 brownfield plan under the brownfield redevelopment financing act,
26 1996 PA 381, MCL 125.2651 to ~~125.2672~~,**125.2670**, if the costs of
27 the eligible investment are not otherwise reimbursed to the
28 taxpayer or paid for on behalf of the taxpayer from any source
29 other than the taxpayer. The addition of leased machinery,

1 equipment, or fixtures to eligible property by a lessee of the
2 machinery, equipment, or fixtures is eligible investment if the
3 lease of the machinery, equipment, or fixtures has a minimum term
4 of 10 years or is for the expected useful life of the machinery,
5 equipment, or fixtures, and if the owner of the machinery,
6 equipment, or fixtures is not the qualified taxpayer with regard to
7 that machinery, equipment, or fixtures. For projects approved after
8 April 8, 2008, eligible investment does not include certain soft
9 costs of the eligible investment as determined by the Michigan
10 economic growth authority, including, but not limited to, developer
11 fees, appraisals, performance bonds, closing costs, bank fees, loan
12 fees, risk contingencies, financing costs, permanent or
13 construction period interest, legal expenses, leasing or sales
14 commissions, marketing costs, professional fees, shared savings,
15 taxes, title insurance, bank inspection fees, insurance, and
16 project management fees. Notwithstanding the foregoing, eligible
17 investment does include architectural, engineering, surveying, and
18 similar professional fees.

19 (e) "Eligible property", except as otherwise provided under
20 subsection (33), means property for which eligible activities are
21 identified under a brownfield plan that was used or is currently
22 used for commercial, industrial, public, or residential purposes,
23 including personal property located on the property, to the extent
24 included in the brownfield plan, and that is 1 or more of the
25 following:

26 (i) Is in a qualified local governmental unit and is a
27 facility, functionally obsolete, or blighted and includes parcels
28 that are adjacent or contiguous to that property if the development
29 of the adjacent and contiguous parcels is estimated to increase the

1 captured taxable value of that property.

2 (ii) Is not in a qualified local governmental unit and is a
3 facility, and includes parcels that are adjacent or contiguous to
4 that property if the development of the adjacent and contiguous
5 parcels is estimated to increase the captured taxable value of that
6 property.

7 (iii) Is tax reverted property owned or under the control of a
8 land bank fast track authority.

9 (f) "Last tax year" means the taxpayer's tax year under former
10 1975 PA 228 that begins after December 31, 2006 and before January
11 1, 2008.

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

15 (h) "Multiphase project" means a project approved under this
16 section that has more than 1 component, each of which can be
17 completed separately.

18 (i) "Personal property" means that term as defined in section
19 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
20 that personal property does not include either of the following:

21 (i) Personal property described in section 8(h), (i), or (j) of
22 the general property tax act, 1893 PA 206, MCL 211.8.

23 (ii) Buildings described in section 14(6) of the general
24 property tax act, 1893 PA 206, MCL 211.14.

25 (j) "Project" means the total of all eligible investment on an
26 eligible property or, for purposes of subsection (6)(b), 1 of the
27 following:

28 (i) All eligible investment on property not in a qualified
29 local governmental unit that is a facility.

1 (ii) All eligible investment on property that is not a facility
2 but is functionally obsolete or blighted.

3 (k) "Qualified local governmental unit" means that term as
4 defined in the obsolete property rehabilitation act, 2000 PA 146,
5 MCL 125.2781 to 125.2797.

6 (l) "Qualified taxpayer" means a taxpayer that meets both of
7 the following criteria:

8 (i) Owns, leases, or has entered into an agreement to purchase
9 or lease eligible property.

10 (ii) Certifies that, except as otherwise provided in this
11 subparagraph, the department of natural resources and environment
12 has not sued or issued a unilateral order to the taxpayer pursuant
13 to part 201 of the natural resources and environmental protection
14 act, 1994 PA 451, MCL 324.20101 to 324.20142, to compel response
15 activity on or to the eligible property, or expended any state
16 funds for response activity on or to the eligible property and
17 demanded reimbursement for those expenditures from the qualified
18 taxpayer. However, if the taxpayer has completed all response
19 activity required by part 201 of the natural resources and
20 environmental protection act, 1994 PA 451, MCL 324.20101 to
21 324.20142, is in compliance with any deed restriction or
22 administrative or judicial order related to the required response
23 activity, and has reimbursed the state for all costs incurred by
24 the state related to the required response activity, the taxpayer
25 meets the criteria under this subparagraph.

26 (m) "Urban development area project" means a project located
27 on eligible property in the downtown or traditional central
28 business district of a qualified local governmental unit or county
29 seat or along a traditional commercial corridor of a qualified

1 local governmental unit or county seat as determined by the
 2 Michigan economic growth authority or the chairperson of the
 3 Michigan economic growth authority or his or her designee.

4 (33) For purposes of subsection (2), eligible property means
 5 that term as defined under subsection (32)(e) except that all of
 6 the following apply:

7 (a) Eligible property means property identified under a
 8 brownfield plan that was used or is currently used for commercial,
 9 industrial, public, or residential purposes and that is 1 of the
 10 following:

11 (i) Property for which eligible activities are identified under
 12 the brownfield plan, is in a qualified local governmental unit, and
 13 is a facility, functionally obsolete, or blighted.

14 (ii) Property that is not in a qualified local governmental
 15 unit but is within a downtown development district established
 16 under ~~1975 PA 197, MCL 125.1651 to 125.1681,~~ **part 2 of the**
 17 **recodified tax increment financing act, 2018 PA 57, MCL 125.4201 to**
 18 **125.4230,** and is functionally obsolete or blighted, and a component
 19 of the project on that eligible property is 1 or more of the
 20 following:

21 (A) Infrastructure improvements that directly benefit the
 22 eligible property.

23 (B) Demolition of structures that is not response activity
 24 under section 20101 of the natural resources and environmental
 25 protection act, 1994 PA 451, MCL 324.20101.

26 (C) Lead or asbestos abatement.

27 (D) Site preparation that is not response activity under
 28 section 20101 of the natural resources and environmental protection
 29 act, 1994 PA 451, MCL 324.20101.

1 (iii) Property for which eligible activities are identified
2 under the brownfield plan, is not in a qualified local governmental
3 unit, and is a facility.

4 (b) Eligible property includes parcels that are adjacent or
5 contiguous to the eligible property if the development of the
6 adjacent or contiguous parcels is estimated to increase the
7 captured taxable value of the property or tax reverted property
8 owned or under the control of a land bank fast track authority
9 pursuant to the land bank fast track act, 2003 PA 258, MCL 124.751
10 to 124.774.

11 (c) Eligible property includes, to the extent included in the
12 brownfield plan, personal property located on the eligible
13 property.

14 (d) Eligible property does not include qualified agricultural
15 property exempt under section 7ee of the general property tax act,
16 1893 PA 206, MCL 211.7ee, from the tax levied by a local school
17 district for school operating purposes to the extent provided under
18 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

19 **(34) If a credit was issued a preapproval letter prior to**
20 **December 31, 2011 for a project involving the development of 2**
21 **adjacent development areas by the same taxpayer and the preapproval**
22 **letter for each of those development areas was amended in 2019 to**
23 **add a qualified taxpayer and adjust the total eligible investment**
24 **approved for each development area, the taxpayer may allocate**
25 **eligible investments made for 1 development area to the other**
26 **development area to maximize the combined credits for both of the**
27 **development areas as long as the sum of the credits for both**
28 **development areas does not exceed the sum of the credits approved**
29 **in the original 2011 preapproval letters, and the taxpayer, after**

1 an eligible investment is made, may petition the Michigan economic
2 growth authority to further amend the project and the preapproval
3 letter to do the following:

4 (a) To increase the maximum total eligible investment for the
5 project on which the credit may be claimed and the maximum total of
6 all credits for the project or allocate eligible investment made
7 from 1 adjacent development area to the other as long as the
8 subsequent amendment to the project and preapproval letter does not
9 exceed the sum of the maximum eligible investment or total credits
10 approved in the original preapproval letters for each of the
11 adjacent development areas.

12 (b) To extend the duration of time for up to 5 additional
13 years to complete the project beyond the 10 years from the date of
14 the original preapproval letter.