

SENATE BILL NO. 437

May 12, 2021, Introduced by Senators SCHMIDT and BULLOCK and referred to the Committee on Economic and Small Business Development.

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
6 received a certificate of completion prior to the taxpayer's last

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

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

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

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

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

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

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

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

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

29 (4) If the cost of a project will be for more than

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

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

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

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

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

(b) Of the projects allowed under this subsection, up to 3 projects may be approved for projects that are not in a qualified local governmental unit if the property is a facility for which

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

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

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

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

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

23 (7) The Michigan economic growth authority shall review all
24 applications for projects under subsection (4) and, if an
25 application is approved, shall determine the maximum total of all
26 credits for that project. Before approving a project for which the
27 total of all credits will be more than \$10,000,000.00 but
28 \$30,000,000.00 or less only, the Michigan economic growth authority
29 shall determine that the project would not occur in this state

1 without the tax credit offered under subsection (4). The Michigan
2 economic growth authority shall consider the following criteria to
3 the extent reasonably applicable to the type of project proposed
4 when approving a project under subsection (4), and the chairperson
5 of the Michigan economic growth authority or his or her designee
6 shall consider the following criteria to the extent reasonably
7 applicable to the type of project proposed when approving a project
8 under subsection (2) or (3) or when considering an amendment to a
9 project under subsection (9):

10 (a) The overall benefit to the public.

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

13 (c) Creation of jobs.

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

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

19 (f) The level of private sector contribution.

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

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

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

26 (j) Any other criteria that the Michigan economic growth
27 authority or the chairperson of the Michigan economic growth
28 authority, as applicable, considers appropriate for the
29 determination of eligibility under subsection (3) or (4).

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

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

1 allocation agreement for the federal low-income housing tax credit.

2 (10) A project may be a multiphase project. If a project is a
3 multiphase project, when each component of the multiphase project
4 is completed, the taxpayer shall submit documentation that the
5 component is complete, an accounting of the cost of the component,
6 and the eligible investment for the component of each taxpayer
7 eligible for a credit for the project of which the component is a
8 part to the Michigan economic growth authority or the designee of
9 the Michigan economic growth authority, who shall verify that the
10 component is complete. When the completion of the component is
11 verified, a component completion certificate shall be issued to the
12 qualified taxpayer which shall state that the taxpayer is a
13 qualified taxpayer, the credit amount for the component, the
14 qualified taxpayer's federal employer identification number or the
15 Michigan treasury number assigned to the taxpayer, and the project
16 number. The taxpayer may assign all or part of the credit for a
17 multiphase project as provided in this section after a component
18 completion certificate for a component is issued. The qualified
19 taxpayer may transfer ownership of or lease the completed component
20 and assign a proportionate share of the credit for the entire
21 project to the qualified taxpayer that is the new owner or lessee.
22 A multiphase project shall not be divided into more than 10
23 components. A component is considered to be completed when a
24 **temporary or final** certificate of occupancy has been issued by the
25 local municipality in which the project is located for all of the
26 buildings or facilities that comprise the completed component and a
27 component completion certificate is issued or the chairperson of
28 the Michigan economic growth authority or his or her designee, for
29 projects approved under subsection (2) or (3), or the Michigan

1 economic growth authority, for projects approved under subsection
2 (4), verifies that the component is complete. A credit assigned
3 based on a multiphase project shall be claimed by the assignee in
4 the tax year in which the assignment is made. The total of all
5 credits for a multiphase project shall not exceed the amount stated
6 in the preapproval letter, as amended, for the project under
7 subsection (1). ~~If~~**Except as otherwise provided under this**
8 **subsection, if** all components of a multiphase project are not
9 completed by 10 years after the date on which the preapproval
10 letter, as amended, if applicable, for the project was issued, the
11 qualified taxpayer that received the preapproval letter for the
12 project shall pay to the state treasurer, as a penalty, an amount
13 equal to the sum of all credits claimed and assigned for all
14 components of the multiphase project and no credits based on that
15 multiphase project shall be claimed after that date by the
16 qualified taxpayer or any assignee of the qualified taxpayer. **A**
17 **qualified taxpayer that was approved for a credit based on a**
18 **multiphase project by Resolution 2020-219 adopted by the Michigan**
19 **economic growth authority and issued a preapproval letter on June**
20 **10, 2011 has until September 14, 2023 to complete that project and**
21 **claim the credit without penalty.** The penalty under this subsection
22 is subject to interest on the amount of the credit claimed or
23 assigned determined individually for each component at the rate in
24 section 23(2) of 1941 PA 122, MCL 205.23, beginning on the date
25 that the credit for that component was claimed or assigned. As used
26 in this subsection, "proportionate share" means the same percentage
27 of the total of all credits for the project that the qualified
28 investment for the completed component is of the total qualified
29 investment stated in the preapproval letter, as amended, for the

1 entire project.

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

27 (a) That the taxpayer is a qualified taxpayer.

28 (b) The total cost of the project and the eligible investment
29 of each qualified taxpayer.

1 (c) Each qualified taxpayer's credit amount.

2 (d) The qualified taxpayer's federal employer identification
3 number or the Michigan treasury number assigned to the taxpayer.

4 (e) The project number.

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

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

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

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

29 (14) Credits claimed by a lessee of eligible property are

1 subject to the total of all credits limitation under this section.

2 (15) Each qualified taxpayer and assignee under subsection
3 (20), (21), or (22) that claims a credit under this section shall
4 attach a copy of the certificate of completion and, if the credit
5 was assigned, a copy of the assignment form provided for under this
6 section to the annual return filed under this act on which the
7 credit under this section is claimed. An assignee of a credit based
8 on a multiphase project shall attach a copy of the assignment form
9 provided for under this section and the component completion
10 certificate provided for in subsection (10) to the annual return
11 filed under this act on which the credit is claimed but is not
12 required to file a copy of a certificate of completion.

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

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

27 (18) Except as otherwise provided under this subsection, if
28 the credit allowed under this section for the tax year and any
29 unused carryforward of the credit allowed under this section exceed

1 the qualified taxpayer's or assignee's tax liability for the tax
2 year, that portion that exceeds the tax liability for the tax year
3 shall not be refunded but may be carried forward to offset tax
4 liability in subsequent tax years for 10 years or until used up,
5 whichever occurs first. Except as otherwise provided in this
6 subsection, the maximum time allowed under the carryforward
7 provisions under this subsection begins with the tax year in which
8 the certificate of completion is issued to the qualified taxpayer.
9 If the qualified taxpayer assigns all or any portion of its credit
10 approved under this section, the maximum time allowed under the
11 carryforward provisions for an assignee begins to run with the tax
12 year in which the assignment is made and the assignee first claims
13 a credit, which shall be the same tax year. The maximum time
14 allowed under the carryforward provisions for an annual credit
15 amount for a credit allowed under subsection (4) begins to run in
16 the tax year for which the annual credit amount is designated on
17 the certificate of completion issued under this section. A credit
18 carryforward available under section 38g of former 1975 PA 228 that
19 is unused at the end of the last tax year may be claimed against
20 the tax imposed under this act for the years the carryforward would
21 have been available under former 1975 PA 228. Beginning on and
22 after April 8, 2008, if the credit allowed under this section for
23 the tax year exceeds the qualified taxpayer's tax liability for the
24 tax year, the qualified taxpayer may elect to have the excess
25 refunded at a rate equal to 85% of that portion of the credit that
26 exceeds the tax liability of the qualified taxpayer for the tax
27 year and forgo the remaining 15% of the credit and any
28 carryforward.

29 (19) If a project or credit under this section is for the

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

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

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

1 other procedures under this subsection, the following apply if the
2 total of all credits for a project is more than \$10,000,000.00 but
3 \$30,000,000.00 or less:

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

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

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

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

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

1 portions of the credit, the qualified taxpayer shall claim the
2 portion it claims in the tax year in which a certificate of
3 completion is issued or for a credit assigned and claimed for a
4 multiphase project, before the component completion certificate is
5 issued, the taxpayer shall claim the credit in the year in which
6 the credit is assigned. A partner, member, or shareholder that is
7 an assignee shall not subsequently assign a credit or any portion
8 of a credit assigned under this subsection. The credit assignment
9 under this subsection shall be made on a form prescribed by the
10 Michigan economic growth authority. The qualified taxpayer shall
11 send a copy of the completed assignment form to the Michigan
12 economic growth authority in the tax year in which the assignment
13 is made. A partner, member, or shareholder who is an assignee shall
14 attach a copy of the completed assignment form to its annual return
15 required under this act, for the tax year in which the assignment
16 is made and the assignee first claims a credit, which shall be the
17 same tax year. A credit assignment based on a credit for a
18 component of a multiphase project that is completed before January
19 1, 2006 shall be made under this subsection. In addition to all
20 other procedures under this subsection, the following apply if the
21 total of all credits for a project is more than \$10,000,000.00 but
22 \$30,000,000.00 or less:

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

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

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

1 each annual credit amount to any assignee.

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

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

1 or subsequent reassignee shall attach a copy of the completed
2 assignment certificate to its annual return required under this
3 act, for the tax year in which the assignment or reassignment is
4 made and the assignee or reassignee first claims a credit, which
5 shall be the same tax year. A credit assignment based on a credit
6 for a component of a multiphase project that is completed before
7 January 1, 2006 shall be made under section 38g(18) of former 1975
8 PA 228. A credit assignment based on a credit for a component of a
9 multiphase project that is completed on or after January 1, 2006
10 may be made under this section. In addition to all other procedures
11 and requirements under this section, the following apply if the
12 total of all credits for a project is more than \$10,000,000.00 but
13 \$30,000,000.00 or less:

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

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

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

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

26 (24) When reviewing an application for a project for
27 designation as an urban development area project, the Michigan
28 economic growth authority for projects approved under subsection
29 (4) or the chairperson of the Michigan economic growth authority or

1 his or her designee for projects approved under subsections (2) and
2 (3) shall consider all of the following criteria:

3 (a) If the project increases the density of the area by
4 promoting multistory development.

5 (b) If the project promotes mixed-use development and walkable
6 communities.

7 (c) If the project promotes sustainable redevelopment.

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

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

11 (f) Any other criteria determined by the Michigan economic
12 growth authority or the chairperson of the Michigan economic growth
13 authority.

14 (25) An eligible taxpayer that claims a credit under this
15 section is not prohibited from claiming a credit under section 431.
16 However, the eligible taxpayer shall not claim a credit under this
17 section and section 431 based on the same costs.

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

28 (27) Eligible investment attributable or related to the
29 operation of a casino, and eligible investment that is associated

1 or affiliated with the operation of a casino, including, but not
2 limited to, the operation of a parking lot, hotel, motel, or retail
3 store, shall not be used as a basis for a credit under this
4 section. As used in this subsection, "casino" means a casino
5 regulated by this state pursuant to the Michigan gaming control and
6 revenue act, 1996 IL 1, MCL 432.201 to 432.226.

7 (28) Eligible investment attributable or related to the
8 construction of a new landfill or the expansion of an existing
9 landfill regulated under part 115 of the natural resources and
10 environmental protection act, 1994 PA 451, MCL 324.11501 to
11 324.11554, shall not be used as a basis for a credit under this
12 section.

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

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

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

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

25 (31) For the 2008 calendar year, the total of all credits for
26 all projects approved under subsection (2) or (3) shall not exceed
27 \$63,000,000.00. For each calendar year after 2008, the total of all
28 credits for all projects approved under subsection (2) or (3) shall
29 not exceed \$40,000,000.00. If the Michigan economic growth

1 authority approves a total of all credits for all projects under
2 subsection (2) or (3) of less than \$40,000,000.00 in a calendar
3 year, the Michigan economic growth authority may carry forward for
4 1 year only the difference between \$40,000,000.00 and the total of
5 all credits for all projects under this subsection approved in the
6 immediately preceding calendar year.

7 (32) As used in this section:

8 (a) "Annual credit amount" means the maximum amount that a
9 qualified taxpayer is eligible to claim each tax year for a project
10 for which the total of all credits is more than \$10,000,000.00 but
11 \$30,000,000.00 or less, as approved under subsection (4).

12 (b) "Authority" means a brownfield redevelopment authority
13 created under the brownfield redevelopment financing act, 1996 PA
14 381, MCL 125.2651 to ~~125.2672~~-**125.2670**.

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

20 (d) "Eligible investment" or "eligible investments" means,
21 when made after the approval date of the brownfield plan but in any
22 event no earlier than 90 days prior to the date of the preapproval
23 letter, any demolition, construction, restoration, alteration,
24 renovation, or improvement of buildings or site improvements on
25 eligible property and the addition of machinery, equipment, and
26 fixtures to eligible property after the date that eligible
27 activities on that eligible property have started pursuant to a
28 brownfield plan under the brownfield redevelopment financing act,
29 1996 PA 381, MCL 125.2651 to ~~125.2672~~, **125.2670**, if the costs of

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

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

29 (i) Is in a qualified local governmental unit and is a

1 facility, functionally obsolete, or blighted and includes parcels
2 that are adjacent or contiguous to that property if the development
3 of the adjacent and contiguous parcels is estimated to increase the
4 captured taxable value of that property.

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

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

12 (f) "Last tax year" means the taxpayer's tax year under former
13 1975 PA 228 that begins after December 31, 2006 and before January
14 1, 2008.

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

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

21 (i) "Personal property" means that term as defined in section
22 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
23 that personal property does not include either of the following:

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

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

28 (j) "Project" means the total of all eligible investment on an
29 eligible property or, for purposes of subsection (6) (b), 1 of the

1 following:

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

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

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

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

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

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

29 (m) "Urban development area project" means a project located

on eligible property in the downtown or traditional central business district of a qualified local governmental unit or county seat or along a traditional commercial corridor of a qualified local governmental unit or county seat as determined by the Michigan economic growth authority or the chairperson of the Michigan economic growth authority or his or her designee.

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

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

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

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

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

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

(C) Lead or asbestos abatement.

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

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

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

14 (c) Eligible property includes, to the extent included in the
15 brownfield plan, personal property located on the eligible
16 property.

17 (d) Eligible property does not include qualified agricultural
18 property exempt under section 7ee of the general property tax act,
19 1893 PA 206, MCL 211.7ee, from the tax levied by a local school
20 district for school operating purposes to the extent provided under
21 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.