

HOUSE BILL No. 5215

October 30, 2003, Introduced by Reps. Rivet, Kolb, McConico, Accavitti, Hunter, Elkins, Farrah, Plakas, Smith, Condino, Gleason, Wojno, Paletko, Bieda, O'Neil, Gillard, Law, Anderson, Byrum, Murphy, Hopgood, Williams, Clack, Minore, Spade, Vagnozzi, Phillips, Cheeks, Tobocman, Reeves, Jammick, Zelenko, Lipsey, Whitmer, Sak, Brown, Adamini, Hardman and Daniels and referred to the Committee on Commerce.

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending sections 37c, 37d, and 38g (MCL 208.37c, 208.37d, and 208.38g), section 37c as amended by 2000 PA 429, section 37d as amended by 1999 PA 100, and section 38g as amended by 2002 PA 726.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

HOUSE BILL No. 5215

1 Sec. 37c. (1) For tax years beginning after December 31,
2 1994 and for a period of time not to exceed 20 years as
3 determined by the Michigan economic growth authority, a taxpayer
4 that is an authorized business may credit against the tax imposed
5 by section 31 the amount certified each year by the Michigan
6 economic growth authority.

7 (2) The credit under this section for an authorized business
8 for the tax year as determined under the Michigan economic growth

1 authority act, 1995 PA 24, MCL 207.801 to 207.810, shall not
2 exceed the payroll of the authorized business attributable to
3 employees who perform qualified new jobs multiplied by the tax
4 rate.

5 (3) A taxpayer shall not claim a credit under this section
6 unless the Michigan economic growth authority has issued a
7 certificate to the taxpayer. The taxpayer shall attach the
8 certificate to the return filed under this act on which a credit
9 under this section is claimed.

10 (4) The certificate required by subsection (3) shall state
11 all of the following:

12 (a) The taxpayer is an authorized business.

13 (b) The amount of the credit under this section for the
14 authorized business for the designated tax year.

15 (c) The taxpayer's federal employer identification number or
16 the Michigan treasury number assigned to the taxpayer.

17 (5) If the credit allowed under this section exceeds the tax
18 liability of the taxpayer for the tax year, the excess shall be
19 refunded to the taxpayer.

20 (6) A taxpayer that claims a credit under this section or
21 section 37d that has an agreement with the Michigan economic
22 growth authority based on qualified new jobs as defined in
23 section 3(j)(ii) of the Michigan economic growth authority act,
24 1995 PA 24, MCL 207.803, that removes from this state 51% or more
25 of those qualified new jobs within 3 years after the first year
26 in which the taxpayer claims a credit described in this
27 subsection shall pay to the department no later than 12 months

1 after those qualified new jobs are removed from the state an
2 amount equal to the total of all credits described in this
3 subsection that were claimed by the taxpayer.

4 (7) An affiliated group as defined in this act, a controlled
5 group of corporations as defined in section 1563 of the internal
6 revenue code and further described in 26 C.F.R. 1.414(b)-1 and
7 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
8 defined by the internal revenue code shall claim only 1 credit
9 under this section for each tax year for each expansion or
10 location evidenced by a written agreement whether or not a
11 combined or consolidated return is filed.

12 (8) A credit shall not be claimed by a taxpayer under this
13 section if the taxpayer's initial certification as required in
14 subsection (3) is issued after December 31, ~~2003~~ 2008.

15 (9) As used in this section:

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

20 (b) "Authorized business", "facility", "full-time job", and
21 "written agreement" mean those terms as defined in the Michigan
22 economic growth authority act, 1995 PA 24, MCL 207.801 to
23 207.810.

24 (c) "Payroll" means the total salaries and wages before
25 deducting any personal or dependency exemptions.

26 (d) "Qualified new jobs" means 1 or more of the following:

27 (i) The average number of full-time jobs at a facility of an

1 authorized business for a tax year in excess of the average
2 number of full-time jobs the authorized business maintained in
3 this state prior to the expansion or location as that is
4 determined under the Michigan economic growth authority act, 1995
5 PA 24, MCL 207.801 to 207.810.

6 (ii) After July 1, 2000, the average number of full-time jobs
7 at a facility created by an eligible business within 120 days
8 before becoming an authorized business, that is in excess of the
9 average number of full-time jobs that the business maintained in
10 this state 120 days before becoming an authorized business, as
11 determined under the Michigan economic growth authority act, 1995
12 PA 24, MCL 207.801 to 207.810.

13 (e) "Tax rate" means the rate imposed under sections 51 and
14 ~~51b to 51e~~ **51d** of the income tax act of 1967, 1967 PA 281, MCL
15 206.51 and ~~206.51b to 206.51e~~ **206.51d**, for the tax year in
16 which the tax year of the taxpayer for which the credit is being
17 computed begins.

18 Sec. 37d. (1) For tax years beginning after December 31,
19 1994, and for a period of time not to exceed 20 years as
20 determined by the Michigan economic growth authority plus any
21 carryforward years allowed under subsection (5), a taxpayer that
22 is an authorized business may credit against the tax imposed by
23 section 31 an amount equal to the tax liability attributable to
24 authorized business activity.

25 (2) A taxpayer shall not claim a credit under this section
26 unless the Michigan economic growth authority has issued a
27 certificate to the taxpayer. The taxpayer shall attach the

1 certificate to the return filed under this act on which a credit
2 under this section is claimed.

3 (3) The certificate required by subsection (2) shall state
4 ~~both~~ **all** of the following:

5 (a) The taxpayer is an authorized business.

6 (b) The amount of the credit under this section for the
7 authorized business for the designated tax year.

8 (c) The taxpayer's federal employer identification number or
9 the Michigan treasury number assigned.

10 (4) The tax liability attributable to authorized business
11 activity is the tax liability imposed by this act after the
12 calculation of the credits provided in sections 36, 37, 38, and
13 39 multiplied by either of the following fractions as
14 appropriate:

15 (a) For an authorized business locating a facility in this
16 state, a fraction the numerator of which is the ratio of the
17 value of the facility to all of the taxpayer's property located
18 in this state plus the ratio of the taxpayer's payroll
19 attributable to qualified new jobs to all of the taxpayer's
20 payroll in this state and the denominator of which is 2.

21 (b) For an authorized business expanding at an existing site,
22 a fraction the numerator of which is the ratio of the value of
23 the new property added to the site as part of that expansion to
24 all of the taxpayer's property located in this state plus the
25 ratio of the taxpayer's payroll attributable to qualified new
26 jobs to all of the taxpayer's payroll in this state and the
27 denominator of which is 2.

1 (5) If the credit allowed under this section for the tax year
2 and any unused carryforward of the credit allowed by this section
3 exceed the taxpayer's tax liability for the tax year, that
4 portion that exceeds the tax liability for the tax year shall not
5 be refunded but may be carried forward to offset tax liability in
6 subsequent tax years for 10 years or until used up, whichever
7 occurs first.

8 (6) A credit shall not be claimed by a taxpayer under this
9 section if the taxpayer's initial certification, as required in
10 subsection (2), is issued after December 31, ~~2003~~ **2008**.

11 (7) As used in this section:

12 (a) "Authorized business" and "facility" mean those terms as
13 defined in the Michigan economic growth authority act, 1995 PA
14 24, MCL 207.801 to 207.810.

15 (b) "Authorized business activity" means the business
16 activity of an authorized business certified under the Michigan
17 economic growth authority act, 1995 PA 24, MCL 207.801 to
18 207.810.

19 (c) "Michigan economic growth authority" means the Michigan
20 economic growth authority created in the Michigan economic growth
21 authority act, 1995 PA 24, MCL 207.801 to 207.810.

22 (d) "Qualified new jobs" means that term as defined in
23 section 37c.

24 Sec. 38g. (1) Subject to the criteria under this section, an
25 eligible taxpayer may claim a credit against the tax imposed by
26 this act as determined under subsections (20) to (25); and
27 subject to the criteria under this section, a qualified taxpayer

1 that has a preapproval letter issued after December 31, 1999 and
2 before January 1, 2008, provided that the project is completed
3 not more than 5 years after the preapproval letter for the
4 project is issued, or an assignee under subsection (17) or (18)
5 may claim a credit that has been approved under subsection (2) or
6 (3) against the tax imposed by this act equal to either of the
7 following:

8 (a) If the total of all credits for a project is
9 \$1,000,000.00 or less, 10% of the cost of the qualified
10 taxpayer's eligible investment paid or accrued by the qualified
11 taxpayer on an eligible property provided that the project does
12 not exceed the amount stated in the preapproval letter. If
13 eligible investment exceeds the amount of eligible investment in
14 the preapproval letter for that project, the total of all credits
15 for the project shall not exceed the total of all credits on the
16 certificate of completion.

17 (b) If the total of all credits for a project is more than
18 \$1,000,000.00 but \$30,000,000.00 or less and, except as provided
19 in subsection (5)(b), the project is located in a qualified local
20 governmental unit, a percentage as determined by the Michigan
21 economic growth authority not to exceed 10% of the cost of the
22 qualified taxpayer's eligible investment as determined under
23 subsection (8) paid or accrued by the qualified taxpayer on an
24 eligible property. If eligible investment exceeds the amount of
25 eligible investment in the preapproval letter for that project,
26 the total of all credits for the project shall not exceed the
27 total of all credits on the certificate of completion.

1 (2) If the cost of a project will be for \$10,000,000.00 or
2 less, a qualified taxpayer shall apply to the department for
3 approval of the project under this subsection. An application
4 under this subsection shall state whether the project is a
5 multiphase project. The state treasurer or a designee of the
6 state treasurer is authorized to approve an application or
7 project under this subsection. Only the state treasurer is
8 authorized to deny an application or project under this
9 subsection. A project shall be approved or denied not more than
10 45 days after receipt of the application. If the state treasurer
11 or the state treasurer's designee does not approve or deny an
12 application within 45 days after the application is received by
13 the department, the application is considered approved as
14 written. The total of all credits for all projects approved
15 under this subsection shall not exceed \$30,000,000.00 in any
16 calendar year. The criteria in subsection (6) shall be used when
17 approving projects under this subsection. When approving
18 projects under this subsection, priority shall be given to
19 projects on a facility. The total of all credits for an approved
20 project under this subsection shall not exceed \$1,000,000.00. A
21 taxpayer may apply under this subsection instead of subsection
22 (3) for approval of a project that will be for more than
23 \$10,000,000.00 but the total of all credits for that project
24 shall not exceed \$1,000,000.00. If the state treasurer or a
25 designee of the state treasurer approves a project under this
26 subsection, the state treasurer or a designee of the state
27 treasurer shall issue a preapproval letter that states that the

1 taxpayer is a qualified taxpayer; the maximum total eligible
2 investment for the project on which credits may be claimed and
3 the maximum total of all credits for the project when the project
4 is completed and a certificate of completion is issued; and the
5 project number assigned by the department. If a project is
6 denied under this subsection, a taxpayer is not prohibited from
7 subsequently applying under this subsection or subsection (3) for
8 the same project or for another project.

9 (3) If the cost of a project will be for more than
10 \$10,000,000.00 and, except as provided in subsection (5)(b), the
11 project is located in a qualified local governmental unit, a
12 qualified taxpayer shall apply to the Michigan economic growth
13 authority for approval of the project. The Michigan economic
14 growth authority shall approve or deny the project not more than
15 65 days after receipt of the application. A project under this
16 subsection shall not be approved without the concurrence of the
17 state treasurer. If the Michigan economic growth authority does
18 not approve or deny the application within 65 days after it
19 receives the application, the Michigan economic growth authority
20 shall send the application to the state treasurer. The state
21 treasurer shall approve or deny the application within 5 days
22 after receipt of the application. If the state treasurer does
23 not deny the application within the 5 days after receipt of the
24 application, the application is considered approved. The
25 Michigan economic growth authority shall approve a limited number
26 of projects under this subsection during each calendar year as
27 provided in subsection (5). The Michigan economic growth

1 authority shall use the criteria in subsection (6) when approving
2 projects under this subsection, when determining the total amount
3 of eligible investment, and when determining the percentage of
4 eligible investment for the project to be used to calculate a
5 credit. The total of all credits for an approved project under
6 this subsection shall not exceed the amount designated in the
7 preapproval letter for that project. If the Michigan economic
8 growth authority approves a project under this subsection, the
9 Michigan economic growth authority shall issue a preapproval
10 letter that states that the taxpayer is a qualified taxpayer; the
11 percentage of eligible investment for the project determined by
12 the Michigan economic growth authority for purposes of subsection
13 (1)(b); the maximum total eligible investment for the project on
14 which credits may be claimed and the maximum total of all credits
15 for the project when the project is completed and a certificate
16 of completion is issued; and the project number assigned by the
17 Michigan economic growth authority. The Michigan economic growth
18 authority shall send a copy of the preapproval letter to the
19 department. If a project is denied under this subsection, a
20 taxpayer is not prohibited from subsequently applying under this
21 subsection or subsection (2) for the same project or for another
22 project.

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

1 (5) The Michigan economic growth authority may approve not
2 more than 15 projects each calendar year under subsection (3),
3 and the following limitations apply:

4 (a) Of the 15 projects allowed under this subsection, the
5 total of all credits for each project may be more than
6 \$10,000,000.00 but \$30,000,000.00 or less for up to 3 projects.

7 (b) Of the 15 projects allowed under this subsection, up to 3
8 projects may be approved for projects that are not in a qualified
9 local governmental unit if the property is a facility for which
10 eligible activities are identified in a brownfield plan. For
11 purposes of this subdivision, a facility includes a building or
12 complex of buildings that was used by a state or federal agency
13 and that is no longer being used for the purpose for which it was
14 used by the state or federal agency.

15 (c) Of the 3 projects allowed under subdivision (a), 1 may be
16 a project that also qualifies under subdivision (b).

17 (6) The Michigan economic growth authority shall review all
18 applications for projects under subsection (3) and, if an
19 application is approved, shall determine the maximum total of all
20 credits for that project. Before approving a project for which
21 the total of all credits will be more than \$10,000,000.00 but
22 \$30,000,000.00 or less only, the Michigan economic growth
23 authority shall determine that the project would not occur in
24 this state without the tax credit offered under subsection (3),
25 except that the Michigan economic growth authority may approve 1
26 project the construction of which began after January 1, 2000 and
27 before January 1, 2001 without determining that the eligible

1 investment would not occur in this state without the tax credit
2 offered under this section. The Michigan economic growth
3 authority shall consider the following criteria to the extent
4 reasonably applicable to the type of project proposed when
5 approving a project under subsection (3) and the state treasurer
6 or a designee of the state treasurer shall consider the following
7 criteria to the extent reasonably applicable to the type of
8 project proposed when approving a project under subsection (2) or
9 when considering an amendment to a project under
10 subsection (31):

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
19 the 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 financial statements of the qualified
27 taxpayer indicate that it is financially sound and that the

1 project is economically sound.

2 (j) Any other criteria that the Michigan economic growth
3 authority or the state treasurer, as applicable, considers
4 appropriate for the determination of eligibility under subsection
5 (2) or (3).

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

12 (8) When a project under subsection (2) or (3) is completed,
13 the taxpayer shall submit documentation that the project is
14 completed, an accounting of the cost of the project, the eligible
15 investment of each taxpayer if there is more than 1 taxpayer
16 eligible for a credit for the project, and, if the taxpayer is
17 not the owner or lessee of the eligible property on which the
18 eligible investment was made at the time the project is
19 completed, that the taxpayer was the owner or lessee of that
20 eligible property when all eligible investment of the taxpayer
21 was made. The state treasurer or a designee of the state
22 treasurer, for projects approved under subsection (2), or the
23 Michigan economic growth authority, for projects approved under
24 subsection (3), shall verify that the project is completed. For
25 projects approved under subsection (3), the Michigan economic
26 growth authority shall conduct an on-site inspection as part of
27 the verification process. When the completion of the project is

1 verified, a certificate of completion shall be issued to each
2 qualified taxpayer that has made eligible investment on that
3 eligible property. The certificate of completion shall state the
4 total amount of all credits for the project and that total shall
5 not exceed the maximum total of all credits listed in the
6 preapproval letter for the project under subsection (2) or (3) as
7 applicable and shall state all of the following:

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

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

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

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

14 (e) The project number.

15 (f) For a project approved under subsection (3) for which the
16 total of all credits is more than \$10,000,000.00 but
17 \$30,000,000.00 or less, the total of all credits and the schedule
18 on which the annual credit amount shall be claimed by the
19 qualified taxpayer.

20 (g) For a multiphase project under subsection ~~-(33)-~~ **(32)**,
21 the amount of each credit assigned and the amount of all credits
22 claimed in each tax year before the year in which the project is
23 completed.

24 (9) Except as otherwise provided in this section, qualified
25 taxpayers shall claim credits under subsections (2) and (3) in
26 the tax year in which the certificate of completion is issued.
27 For a project approved under subsection (3) for which the total

1 of all credits is more than \$10,000,000.00 but \$30,000,000.00 or
2 less, the qualified taxpayer shall claim 10% of its approved
3 credit each year for 10 years. A credit assigned based on a
4 multiphase project shall be claimed in the year in which the
5 credit is assigned.

6 (10) The cost of eligible investment for leased machinery,
7 equipment, or fixtures is the cost of that property had the
8 property been purchased minus the lessor's estimate, made at the
9 time the lease is entered into, of the market value the property
10 will have at the end of the lease. A credit for property
11 described in this subsection is allowed only if the cost of that
12 property had the property been purchased and the lessor's
13 estimate of the market value at the end of the lease are provided
14 to the department or the Michigan economic growth authority, as
15 applicable.

16 (11) For credits under subsections (2) and (3), credits
17 claimed by a lessee of eligible property are subject to the total
18 of all credits limitation under this section.

19 (12) Each qualified taxpayer and assignee under subsection
20 (17) or (18) that claims a credit under subsection (1)(a) or (b)
21 shall attach a copy of the certificate of completion and, if the
22 credit was assigned, a copy of the assignment form provided for
23 under this section to the annual return filed under this act on
24 which the credit under subsection (2) or (3) is claimed. An
25 assignee of a credit based on a multiphase project shall attach a
26 copy of the assignment form provided for under this section and
27 the component completion certificate provided for in

1 subsection (32) to the annual return filed under this act on
2 which the credit is claimed but is not required to file a copy of
3 a certificate of completion.

4 (13) Except as otherwise provided in this subsection or
5 subsection (15), (17), (19), or (32), a credit under subsection
6 (2) or (3) shall be claimed in the tax year in which the
7 certificate of completion is issued to the qualified taxpayer.
8 For a project described in subsection (8)(f) for which a schedule
9 for claiming annual credit amounts is designated on the
10 certificate of completion by the Michigan economic growth
11 authority, the annual credit amount shall be claimed in the tax
12 year specified on the certificate of completion.

13 (14) The credits approved under this section shall be
14 calculated after application of all other credits allowed under
15 this act. The credits under subsections (2) and (3) shall be
16 calculated before the calculation of credits under subsections
17 (20) to (25) and before the credits under sections 37c and 37d.

18 (15) If the credit allowed under subsection (2) or (3) for
19 the tax year and any unused carryforward of the credit allowed
20 under subsection (2) or (3) exceed the qualified taxpayer's or
21 assignee's tax liability for the tax year, that portion that
22 exceeds the tax liability for the tax year shall not be refunded
23 but may be carried forward to offset tax liability in subsequent
24 tax years for 10 years or until used up, whichever occurs first.
25 Except as otherwise provided in this subsection, the maximum time
26 allowed under the carryforward provisions under this subsection
27 begins with the tax year in which the certificate of completion

1 is issued to the qualified taxpayer. If the qualified taxpayer
2 assigns all or any portion of its credit approved under
3 subsection (2) or (3), the maximum time allowed under the
4 carryforward provisions for an assignee begins to run with the
5 tax year in which the assignment is made and the assignee first
6 claims a credit, which shall be the same tax year. The maximum
7 time allowed under the carryforward provisions for an annual
8 credit amount for a credit allowed under subsection (3) begins to
9 run in the tax year for which the annual credit amount is
10 designated on the certificate of completion issued under this
11 section.

12 (16) If a project or credit under subsection (2) or (3) is
13 for the addition of personal property, if the cost of that
14 personal property is used to calculate a credit under subsection
15 (2) or (3), and if the personal property is sold or disposed of
16 or transferred from eligible property to any other location, the
17 qualified taxpayer that sold, disposed of, or transferred the
18 personal property shall add the same percentage as determined
19 pursuant to subsection (1) of the federal basis of the personal
20 property used for determining gain or loss as of the date of the
21 sale, disposition, or transfer to the qualified taxpayer's tax
22 liability after application of all credits under this act for the
23 tax year in which the sale, disposition, or transfer occurs. If
24 a qualified taxpayer has an unused carryforward of a credit under
25 subsection (2) or (3), the amount otherwise added under this
26 subsection to the qualified taxpayer's tax liability may instead
27 be used to reduce the qualified taxpayer's carryforward under

1 subsection (15).

2 (17) For credits under subsections (2) and (3) and except as
3 otherwise provided in this subsection, if a qualified taxpayer
4 pays or accrues eligible investment on or to an eligible property
5 that is leased for a minimum term of 10 years or sold to another
6 taxpayer for use in a business activity, the qualified taxpayer
7 may assign all or a portion of the credit based on that eligible
8 investment to the lessee or purchaser of that eligible property.
9 A credit assignment under this subsection shall only be made to a
10 taxpayer that when the assignment is complete will be a qualified
11 taxpayer. All credit assignments under this subsection are
12 irrevocable and, except for a credit based on a multiphase
13 project, shall be made in the tax year in which the certificate
14 of completion is issued, unless the assignee is an unknown
15 lessee. If a qualified taxpayer wishes to assign all or a
16 portion of its credit to a lessee but the lessee is unknown in
17 the tax year in which the certificate of completion is issued,
18 the qualified taxpayer may delay claiming and assigning the
19 credit until the first tax year in which the lessee is known. A
20 qualified taxpayer may claim a portion of a credit and assign the
21 remaining credit amount. Except as otherwise provided in this
22 subsection, if the qualified taxpayer both claims and assigns
23 portions of the credit, the qualified taxpayer shall claim the
24 portion it claims in the tax year in which the certificate of
25 completion is issued or for a credit assigned and claimed for a
26 multiphase project before a certificate of completion is issued,
27 the taxpayer shall claim the credit in the year in which the

1 credit is assigned. If a qualified taxpayer assigns all or a
2 portion of the credit and the eligible property is leased to more
3 than 1 taxpayer, the qualified taxpayer shall determine the
4 amount of credit assigned to each lessee. A lessee shall not
5 subsequently assign a credit or any portion of a credit assigned
6 under this subsection. A purchaser may subsequently assign a
7 credit or any portion of a credit assigned to the purchaser under
8 this subsection to a lessee of the eligible property. The credit
9 assignment under this subsection shall be made on a form
10 prescribed by the department. The qualified taxpayer shall send
11 a copy of the completed assignment form to the department in the
12 tax year in which the assignment is made. The assignee shall
13 attach a copy of the completed assignment form to its annual
14 return required to be filed under this act, for the tax year in
15 which the assignment is made and the assignee first claims a
16 credit, which shall be the same tax year. In addition to all
17 other procedures under this subsection, the following apply if
18 the total of all credits for a project is more than
19 \$10,000,000.00 but \$30,000,000.00 or less:

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

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

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

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

3 (18) If a qualified taxpayer is a partnership, limited
4 liability company, or subchapter S corporation, the qualified
5 taxpayer may assign all or a portion of a credit allowed under
6 subsection (2) or (3) to its partners, members, or shareholders,
7 based on their proportionate share of ownership of the
8 partnership, limited liability company, or subchapter S
9 corporation or based on an alternative method approved by the
10 department. A credit assignment under this subsection is
11 irrevocable and, except for a credit assignment based on a
12 multiphase project, shall be made in the tax year in which a
13 certificate of completion is issued. A qualified taxpayer may
14 claim a portion of a credit and assign the remaining credit
15 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. A partner, member, or shareholder that is
19 an assignee shall not subsequently assign a credit or any portion
20 of a credit assigned under this subsection. The credit
21 assignment under this subsection shall be made on a form
22 prescribed by the department. The qualified taxpayer shall send
23 a copy of the completed assignment form to the department in the
24 tax year in which the assignment is made. A partner, member, or
25 shareholder who is an assignee shall attach a copy of the
26 completed assignment form to its annual return required under
27 this act, for the tax year in which the assignment is made and

1 the assignee first claims a credit, which shall be the same tax
2 year. In addition to all other procedures under this subsection,
3 the following apply if the total of all credits for a project is
4 more than \$10,000,000.00 but \$30,000,000.00 or less:

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

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

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

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

15 (19) A qualified taxpayer or assignee under subsection (17)
16 or (18) shall not claim a credit under subsection (1)(a) or (b)
17 based on eligible investment on which a credit claimed under
18 section 38d was based.

19 (20) In addition to the other credits allowed under this
20 section and sections 37c and 37d, for tax years that begin after
21 December 31, 1999 and for a period of time not to exceed 20 years
22 as determined by the Michigan economic growth authority, an
23 eligible taxpayer may credit against the tax imposed by section
24 31 the amount certified each year by the Michigan economic growth
25 authority that is 1 of the following:

26 (a) For an eligible business under section 8(5)(a) of the
27 Michigan economic growth authority act, 1995 PA 24, MCL 207.808,

1 an amount that is not more than 50% of 1 or both of the following
2 as determined by the Michigan economic growth authority:

3 (i) An amount determined under the Michigan economic growth
4 authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not
5 exceed the payroll of the eligible taxpayer attributable to
6 employees who perform retained jobs multiplied by the tax rate
7 for the tax year.

8 (ii) The tax liability attributable to the eligible
9 taxpayer's business activity multiplied by a fraction the
10 numerator of which is the ratio of the value of new capital
11 investment to all of the taxpayer's property located in this
12 state plus the ratio of the taxpayer's payroll attributable to
13 retained jobs to all of the taxpayer's payroll in this state and
14 the denominator of which is 2.

15 (b) For an eligible business under section 8(5)(b) of the
16 Michigan economic growth authority act, 1995 PA 24, MCL 207.808,
17 an amount that is not more than 1 or both of the following as
18 determined by the Michigan economic growth authority:

19 (i) An amount determined under the Michigan economic growth
20 authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not
21 exceed the payroll of the eligible taxpayer attributable to
22 employees who perform retained jobs multiplied by the tax rate
23 for the tax year.

24 (ii) The tax liability attributable to eligible taxpayer's
25 business **activity** multiplied by a fraction the numerator of which
26 is the ratio of the value of capital investment to all of the
27 taxpayer's property located in this state plus the ratio of the

1 taxpayer's payroll attributable to retained jobs to all of the
2 taxpayer's payroll in this state and the denominator of which is
3 2.

4 (21) An eligible taxpayer shall not claim a credit under
5 subsection (20) unless the Michigan economic growth authority has
6 issued a certificate under section 9 of the Michigan economic
7 growth authority act, 1995 PA 24, MCL 207.809, to the taxpayer.
8 The eligible taxpayer shall attach the certificate to the return
9 filed under this act on which a credit under subsection (20) is
10 claimed.

11 (22) An affiliated group as defined in this act, a controlled
12 group of corporations as defined in section 1563 of the internal
13 revenue code and further described in 26 C.F.R. 1.414(b)-1 and
14 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
15 defined by the internal revenue code shall claim only 1 credit
16 under subsection (20) for each tax year based on each written
17 agreement whether or not a combined or consolidated return is
18 filed.

19 (23) A credit shall not be claimed by a taxpayer under
20 subsection (20) if the eligible taxpayer's initial certification
21 under section 9 of the Michigan economic growth authority act,
22 1995 PA 24, MCL 207.809, is issued after December 31, ~~2003~~
23 2008.

24 (24) If the credit allowed under subsection (20)(a)(ii) or
25 (b)(ii) for the tax year and any unused carryforward of the
26 credit allowed by subsection (20)(a)(ii) or (b)(ii) exceed the
27 taxpayer's tax liability for the tax year, that portion that

1 exceeds the tax liability for the tax year shall not be refunded
2 but may be carried forward to offset tax liability in subsequent
3 tax years for 10 years or until used up, whichever occurs first.

4 (25) If the credit allowed under subsection (20)(a)(i) or
5 (b)(i) exceeds the tax liability of the eligible taxpayer for the
6 tax year, the excess shall be refunded to the eligible taxpayer.

7 (26) An eligible taxpayer that claims a credit under
8 subsection (1)(a) or (b) is not prohibited from claiming a credit
9 under subsection (20). However, the eligible taxpayer shall not
10 claim a credit under both subsections (1)(a) or (b) and (20)
11 based on the same costs.

12 (27) Eligible investment attributable or related to the
13 operation of a professional sports stadium, and eligible
14 investment that is associated or affiliated with the operation of
15 a professional sports stadium, including, but not limited to, the
16 operation of a parking lot or retail store, shall not be used as
17 a basis for a credit under subsection (2) or (3). Professional
18 sports stadium does not include a professional sports stadium
19 that will no longer be used by a professional sports team on and
20 after the date that an application related to that professional
21 sports stadium is filed under subsection (2) or (3).

22 (28) Eligible investment attributable or related to the
23 operation of a casino, and eligible investment that is associated
24 or affiliated with the operation of a casino, including, but not
25 limited to, the operation of a parking lot, hotel, motel, or
26 retail store, shall not be used as a basis for a credit under
27 subsection (2) or (3). As used in this subsection, "casino"

1 means a casino regulated by this state pursuant to the Michigan
2 gaming control and revenue act, the Initiated Law of 1996,
3 MCL 432.201 to 432.226.

4 (29) 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
8 324.11550, shall not be used as a basis for a credit under
9 subsection (2) or (3).

10 (30) The department annually shall prepare and submit to the
11 house of representatives and senate committees responsible for
12 tax policy and economic development issues a report on the
13 credits under subsection (2). The report shall include, but is
14 not limited to, all of the following:

15 (a) A listing of the projects under subsection (2) that were
16 approved in the calendar year.

17 (b) The total amount of eligible investment for projects
18 approved under subsection (2) in the calendar year.

19 (31) If, after a taxpayer's project has been approved and the
20 taxpayer has received a preapproval letter but before the project
21 is completed, the taxpayer determines that the project cannot be
22 completed as preapproved, the taxpayer may petition the
23 department for projects approved under subsection (2) or the
24 Michigan economic growth authority for projects approved under
25 subsection (3) to amend the project. The total of eligible
26 investment for the project as amended shall not exceed the amount
27 allowed in the preapproval letter for that project.

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

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

24 (33) As used in this section:

25 (a) "Annual credit amount" means the maximum amount that a
26 qualified taxpayer is eligible to claim each tax year for a
27 project for which the total of all credits is more than

1 \$10,000,000.00 but \$30,000,000.00 or less, which shall be 10% of
2 the qualified taxpayer's credit amount approved under subsection
3 (3).

4 (b) "Authority" means a brownfield redevelopment authority
5 created under the brownfield redevelopment financing act, 1996
6 PA 381, MCL 125.2651 to 125.2672.

7 (c) "Authorized business", "full-time job", "new capital
8 investment", "retained jobs", and "written agreement" mean those
9 terms as defined in the Michigan economic growth authority act,
10 1995 PA 24, MCL 207.801 to 207.810.

11 (d) "Blighted", "brownfield plan", "eligible activities",
12 "eligible property", "facility", "functionally obsolete", and
13 "response activity" mean those terms as defined in the brownfield
14 redevelopment financing act, 1996 PA 381, MCL 125.2651 to
15 125.2672.

16 (e) "Eligible investment" means demolition, construction,
17 restoration, alteration, renovation, or improvement of buildings
18 or site improvements on eligible property and the addition of
19 machinery, equipment, and fixtures to eligible property after the
20 date that eligible activities on that eligible property have
21 started pursuant to a brownfield plan under the brownfield
22 redevelopment financing act, 1996 PA 381, MCL 125.2651 to
23 125.2672, and after the date that the preapproval letter is
24 issued, except that the date that the preapproval letter is
25 issued is not a limitation for 1 project the construction of
26 which began after January 1, 2000 and before January 1, 2001
27 without the Michigan economic growth authority determining that

1 the project would not occur in this state without the tax credit
2 offered under this section as provided in subsection (7), if the
3 costs of the eligible investment are not otherwise reimbursed to
4 the taxpayer or paid for on behalf of the taxpayer from any
5 source other than the taxpayer. The addition of leased
6 machinery, equipment, or fixtures to eligible property by a
7 lessee of the machinery, equipment, or fixtures is eligible
8 investment if the lease of the machinery, equipment, or fixtures
9 has a minimum term of 10 years or is for the expected useful life
10 of the machinery, equipment, or fixtures, and if the owner of the
11 machinery, equipment, or fixtures is not the qualified taxpayer
12 with regard to that machinery, equipment, or fixtures.

13 (f) "Eligible taxpayer" means an eligible business that meets
14 the criteria under section 8(5) of the Michigan economic growth
15 authority act, 1995 PA 24, MCL 207.808.

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

19 (h) "Multiphase project" means a project for which the total
20 of all credits is \$1,000,000.00 or less for a project approved
21 under subsection (2) that has more than 1 component, each of
22 which can be completed separately.

23 (i) "Payroll" and "tax rate" mean those terms as defined in
24 section 37c.

25 (j) "Personal property" means that term as defined in section
26 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
27 that personal property does not include either of the following:

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

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

5 (k) "Project" means the total of all eligible investment on
6 an eligible property or, for purposes of subsection (5)(b), all
7 eligible investment on property not in a qualified local
8 governmental unit that is a facility.

9 (l) "Qualified local governmental unit" means that term as
10 defined in the obsolete property rehabilitation act, **2000 PA 146,**
11 **MCL 125.2781 to 125.2797.**

12 (m) "Qualified taxpayer" means a taxpayer that meets both of
13 the following criteria:

14 (i) Owns or leases eligible property.

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

1 activity, and has reimbursed the state for all costs incurred by
2 the state related to the required response activity, the taxpayer
3 meets the criteria under this subparagraph.

4 (n) "Tax liability attributable to authorized business
5 activity" means the tax liability imposed by this act after the
6 calculation of credits provided in sections 36, 37, and 39.