

HOUSE BILL No. 6748

November 25, 2008, Introduced by Reps. Meisner and Knollenberg and referred to the Committee on Commerce.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending section 437 (MCL 208.1437), as amended by 2008 PA 89.

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, 2013,
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
7 tax year, provided that the project is completed not more than 5
8 years after the preapproval letter for the project is issued unless
9 extended under subsection (9) or if it is a multiphase project not

1 more than 10 years after the preapproval letter, as amended, if
2 applicable, for the project is issued, or an assignee under
3 subsection (20), (21), or (22) may claim a credit that has been
4 approved under section 38g of former 1975 PA 228 or under
5 subsection (2), (3), or (4) against the tax imposed by this act
6 equal to either of the following:

7 (a) For projects approved before ~~the effective date of the~~
8 ~~amendatory act that added subsection (33)~~ **APRIL 8, 2008**, if the
9 total of all credits for a project is \$1,000,000.00 or less, 10% of
10 the cost of the qualified taxpayer's eligible investment paid or
11 accrued by the qualified taxpayer on an eligible property provided
12 that the project does not exceed the amount stated in the
13 preapproval letter, as amended. For projects approved on and after
14 ~~the effective date of the amendatory act that added subsection (33)~~
15 **APRIL 8, 2008**, if the total of all eligible investments for a
16 project are \$10,000,000.00 or less, up to 12.5% of the costs of the
17 qualified taxpayer's eligible investment paid or accrued by the
18 qualified taxpayer on an eligible property or up to 15% of the
19 costs of the qualified taxpayer's eligible investment paid or
20 accrued by the qualified taxpayer on an eligible property if the
21 project is designated as an urban development area project by the
22 Michigan economic growth authority to the extent that the project
23 does not exceed the amount stated in the preapproval letter, as
24 amended, or, until December 31, 2010, up to 20% of the costs of the
25 qualified taxpayer's eligible investment paid or accrued by the
26 qualified taxpayer on an eligible property if the project is
27 designated as an urban development area project by the Michigan

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

6 (b) For projects approved before ~~the effective date of the~~
7 ~~amendatory act that added subsection (33)~~ **APRIL 8, 2008**, if the
8 total of all credits for a project is more than \$1,000,000.00 but
9 \$30,000,000.00 or less and, except as provided in subsection
10 (6)(b), the project is located in a qualified local governmental
11 unit, a percentage as determined by the Michigan economic growth
12 authority not to exceed 10% of the cost of the qualified taxpayer's
13 eligible investment as determined under subsection (11) paid or
14 accrued by the qualified taxpayer on an eligible property. For
15 projects approved on and after ~~the effective date of the amendatory~~
16 ~~act that added subsection (33)~~ **APRIL 8, 2008**, if the total of all
17 eligible investments for a project is more than \$10,000,000.00 but
18 \$300,000,000.00 or less, up to 12.5% of the costs of the qualified
19 taxpayer's eligible investment as determined under subsection (11)
20 paid or accrued by the qualified taxpayer on an eligible property
21 that, except as provided in subsection (6)(b), is located in a
22 qualified local governmental unit, up to 15% of the cost of the
23 qualified taxpayer's eligible investment as determined under
24 subsection (11) paid or accrued by the qualified taxpayer on an
25 eligible property if the project is designated as an urban
26 development area project by the Michigan economic growth authority,
27 or, until December 31, 2010, up to 20% of the costs of the

1 qualified taxpayer's eligible investment as determined under
2 subsection (11) paid or accrued by the qualified taxpayer on an
3 eligible property if the project is designated as an urban
4 development area project by the Michigan economic growth authority.
5 If eligible investment exceeds the amount of eligible investment in
6 the preapproval letter, as amended, for that project, the total of
7 all credits for the project shall not exceed the total of all
8 credits on the certificate of completion.

9 (2) If the cost of a project will be \$2,000,000.00 or less, a
10 qualified taxpayer shall apply to the Michigan economic growth
11 authority for approval of the project under this subsection. An
12 application under this subsection shall state whether the project
13 is a multiphase project. Subject to the limitation provided under
14 subsection (31), the chairperson of the Michigan economic growth
15 authority or his or her designee is authorized to approve an
16 application or project under this subsection. Only the chairperson
17 of the Michigan economic growth authority is authorized to deny an
18 application or project under this subsection. A project shall be
19 approved or denied not more than 45 days after receipt of the
20 application. If the chairperson of the Michigan economic growth
21 authority or his or her designee does not approve or deny the
22 application within 45 days after the application is received by the
23 Michigan economic growth authority, the application is considered
24 approved as written. If the chairperson of the Michigan economic
25 growth authority or his or her designee approves a project under
26 this subsection, the chairperson of the Michigan economic growth
27 authority or his or her designee shall issue a preapproval letter

1 that states that the taxpayer is a qualified taxpayer; the maximum
2 total eligible investment for the project on which credits may be
3 claimed and the maximum total of all credits for the project when
4 the project is completed and a certificate of completion is issued;
5 and the project number assigned by the Michigan economic growth
6 authority. If a project is denied under this subsection, a taxpayer
7 is not prohibited from subsequently applying under this subsection
8 for the same project or for another project. The Michigan economic
9 growth authority shall develop and implement the use of the
10 application form to be used for projects under this subsection.

11 (3) If the cost of a project will be for more than
12 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer
13 shall apply to the Michigan economic growth authority for approval
14 of the project under this subsection. An application under this
15 subsection shall state whether the project is a multiphase project.
16 Subject to the limitation provided under subsection (31), the
17 chairperson of the Michigan economic growth authority or his or her
18 designee is authorized to approve an application or project under
19 this subsection. Only the chairperson of the Michigan economic
20 growth authority is authorized to deny an application or project
21 under this subsection. A project shall be approved or denied not
22 more than 45 days after receipt of the application. If the
23 chairperson of the Michigan economic growth authority or his or her
24 designee does not approve or deny an application within 45 days
25 after the application is received by the Michigan economic growth
26 authority, the application is considered approved as written. The
27 criteria in subsection (7) shall be used when approving projects

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

21 (4) If the cost of a project will be for more than
22 \$10,000,000.00 and, except as provided in subsection (6)(b), the
23 project is located in a qualified local governmental unit, a
24 qualified taxpayer shall apply to the Michigan economic growth
25 authority for approval of the project. An application under this
26 subsection shall state whether the project is a multiphase project.
27 The Michigan economic growth authority shall approve or deny the

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

1 for the project when the project is completed and a certificate of
2 completion is issued; and the project number assigned by the
3 Michigan economic growth authority. The Michigan economic growth
4 authority shall send a copy of the preapproval letter to the
5 department. If a project is denied under this subsection, a
6 taxpayer is not prohibited from subsequently applying under this
7 subsection or subsection (3) for the same project or for another
8 project.

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

14 (6) The Michigan economic growth authority may approve not
15 more than 20 projects each calendar year under subsection (4), and
16 the following limitations apply:

17 (a) Of the 20 projects allowed under this subsection, the
18 total of all credits for each project may be more than
19 \$10,000,000.00 but \$30,000,000.00 or less for only 1 project.

20 (b) Of the 20 projects allowed under this subsection, up to 3
21 projects may be approved for projects that are not in a qualified
22 local governmental unit if the property is a facility for which
23 eligible activities are identified in a brownfield plan, ~~or, for 1~~
24 ~~of the 3 projects,~~ if the property is not a facility but is
25 functionally obsolete or blighted, property identified in a
26 brownfield plan, **OR IF THE PROPERTY IS FUNCTIONALLY OBSOLETE OR**
27 **BLIGHTED, PROPERTY IDENTIFIED IN A BROWNFIELD PLAN AND IS LOCATED**

1 IN A CITY WITH A POPULATION OF 70,000 OR MORE AND WITHIN 10 MILES
2 OF ANOTHER CITY IN THIS STATE WITH A POPULATION OF 500,000 OR MORE
3 AS DESIGNATED BY THE UNITED STATES BUREAU OF THE CENSUS IN THE 2000
4 CENSUS. For purposes of this subdivision, a facility includes a
5 building or complex of buildings that was used by a state or
6 federal agency and that is no longer being used for the purpose for
7 which it was used by the state or federal agency. FOR PURPOSES OF
8 THIS SUBDIVISION, THE MICHIGAN ECONOMIC GROWTH AUTHORITY SHALL GIVE
9 PREFERENCE TO MIXED USE PROJECTS THAT SATISFY EACH OF THE
10 FOLLOWING:

11 (i) THE AMOUNT OF NEW CONSTRUCTION INVESTMENT IS \$50,000,000.00
12 OR MORE.

13 (ii) THE PROJECT INCLUDES AT LEAST 1 ABOVEGROUND MULTILEVEL
14 PARKING FACILITY OR UNDERGROUND PARKING FACILITY.

15 (iii) THE PROJECT INCLUDES AT LEAST ONE 2-STORY OR GREATER
16 STRUCTURE OTHER THAN A PARKING FACILITY.

17 (iv) THE PROJECT IS REGIONALLY TRANSFORMATIONAL.

18 (v) THIS STATE AND REGION WILL BENEFIT FROM THE PROJECT.

19 (vi) THE PROJECT ADDRESSES A MAJOR REDEVELOPMENT NEED IN THE
20 COMMUNITY.

21 (vii) THE PROJECT'S REQUIREMENTS REQUIRE A STRONG SUBSIDY.

22 (c) The project allowed under subdivision (a) may also qualify
23 under subdivision (b).

24 (7) The Michigan economic growth authority shall review all
25 applications for projects under subsection (4) and, if an
26 application is approved, shall determine the maximum total of all
27 credits for that project. Before approving a project for which the

1 total of all credits will be more than \$10,000,000.00 but
2 \$30,000,000.00 or less only, the Michigan economic growth authority
3 shall determine that the project would not occur in this state
4 without the tax credit offered under subsection (4). The Michigan
5 economic growth authority shall consider the following criteria to
6 the extent reasonably applicable to the type of project proposed
7 when approving a project under subsection (4), and the chairperson
8 of the Michigan economic growth authority or his or her designee
9 shall consider the following criteria to the extent reasonably
10 applicable to the type of project proposed when approving a project
11 under subsection (2) or (3) or when considering an amendment to a
12 project under subsection (9):

13 (a) The overall benefit to the public.

14 (b) The extent of reuse of vacant buildings and redevelopment
15 of blighted property.

16 (c) Creation of jobs.

17 (d) Whether the eligible property is in an area of high
18 unemployment.

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

22 (f) The level of private sector contribution.

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

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

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

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

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

11 (9) If, after a taxpayer's project has been approved and the
12 taxpayer has received a preapproval letter but before the taxpayer
13 has made an eligible investment, other than soft costs, at the
14 property, the taxpayer determines that the project cannot be
15 completed as preapproved, the taxpayer may petition the Michigan
16 economic growth authority to amend the project and the preapproval
17 letter to increase the maximum total eligible investment for the
18 project on which credits may be claimed and the maximum total of
19 all credits for the project. A taxpayer may petition the Michigan
20 economic growth authority to make any other amendments to the
21 project or preapproval letter at any time before a certificate of
22 completion is issued. Amendments to the project or preapproval
23 letter may include, but are not limited to, extending the duration
24 of time provided to complete the project, as long as that extension
25 does not exceed 10 years from the date of the preapproval letter.

26 (10) A project may be a multiphase project. If a project is a
27 multiphase project, when each component of the multiphase project

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

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

24 (11) When a project under this section is completed, the
25 taxpayer shall submit documentation that the project is completed,
26 an accounting of the cost of the project, the eligible investment
27 of each taxpayer if there is more than 1 taxpayer eligible for a

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

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

1 (e) The project number.

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

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

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

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

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

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

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

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

26 (18) Except as otherwise provided under this subsection, if
27 the credit allowed under this section for the tax year and any

1 unused carryforward of the credit allowed under this section exceed
2 the qualified taxpayer's or assignee's tax liability for the tax
3 year, that portion that exceeds the tax liability for the tax year
4 shall not be refunded but may be carried forward to offset tax
5 liability in subsequent tax years for 10 years or until used up,
6 whichever occurs first. Except as otherwise provided in this
7 subsection, the maximum time allowed under the carryforward
8 provisions under this subsection begins with the tax year in which
9 the certificate of completion is issued to the qualified taxpayer.
10 If the qualified taxpayer assigns all or any portion of its credit
11 approved under this section, the maximum time allowed under the
12 carryforward provisions for an assignee begins to run with the tax
13 year in which the assignment is made and the assignee first claims
14 a credit, which shall be the same tax year. The maximum time
15 allowed under the carryforward provisions for an annual credit
16 amount for a credit allowed under subsection (4) begins to run in
17 the tax year for which the annual credit amount is designated on
18 the certificate of completion issued under this section. A credit
19 carryforward available under section 38g of former 1975 PA 228 that
20 is unused at the end of the last tax year may be claimed against
21 the tax imposed under act for the years the carryforward would have
22 been available under former 1975 PA 228. Beginning on and after ~~the~~
23 ~~effective date of the amendatory act that added subsection (33)~~
24 **APRIL 8, 2008**, if the credit allowed under this section for the tax
25 year exceeds the qualified taxpayer's tax liability for the tax
26 year, the qualified taxpayer may elect to have the excess refunded
27 at a rate equal to 85% of that portion of the credit that exceeds

1 the tax liability of the qualified taxpayer for the tax year and
2 forgo the remaining 15% of the credit and any carryforward.

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

19 (20) For credits under this section for projects for which a
20 certificate of completion is issued before January 1, 2006 and
21 except as otherwise provided in this subsection, if a qualified
22 taxpayer pays or accrues eligible investment on or to an eligible
23 property that is leased for a minimum term of 10 years or sold to
24 another taxpayer for use in a business activity, the qualified
25 taxpayer may assign all or a portion of the credit under this
26 section based on that eligible investment to the lessee or
27 purchaser of that eligible property. A credit assignment under this

1 subsection shall only be made to a taxpayer that when the
2 assignment is complete will be a qualified taxpayer. All credit
3 assignments under this subsection are irrevocable and, except for a
4 credit based on a multiphase project, shall be made in the tax year
5 in which the certificate of completion is issued, unless the
6 assignee is an unknown lessee. If a qualified taxpayer wishes to
7 assign all or a portion of its credit to a lessee but the lessee is
8 unknown in the tax year in which the certificate of completion is
9 issued, the qualified taxpayer may delay claiming and assigning the
10 credit until the first tax year in which the lessee is known. A
11 qualified taxpayer may claim a portion of a credit and assign the
12 remaining credit amount. Except as otherwise provided in this
13 subsection, if the qualified taxpayer both claims and assigns
14 portions of the credit, the qualified taxpayer shall claim the
15 portion it claims in the tax year in which the certificate of
16 completion is issued or, for a credit assigned and claimed for a
17 multiphase project before a certificate of completion is issued,
18 the taxpayer shall claim the credit in the year in which the credit
19 is assigned. If a qualified taxpayer assigns all or a portion of
20 the credit and the eligible property is leased to more than 1
21 taxpayer, the qualified taxpayer shall determine the amount of
22 credit assigned to each lessee. A lessee shall not subsequently
23 assign a credit or any portion of a credit assigned under this
24 subsection. A purchaser may subsequently assign a credit or any
25 portion of a credit assigned to the purchaser under this subsection
26 to a lessee of the eligible property. The credit assignment under
27 this subsection shall be made on a form prescribed by the Michigan

1 economic growth authority. The qualified taxpayer shall send a copy
2 of the completed assignment form to the Michigan economic growth
3 authority in the tax year in which the assignment is made. The
4 assignee shall attach a copy of the completed assignment form to
5 its annual return required to be filed under this act, for the tax
6 year in which the assignment is made and the assignee first claims
7 a credit, which shall be the same tax year. In addition to all
8 other procedures under this subsection, the following apply if the
9 total of all credits for a project is more than \$10,000,000.00 but
10 \$30,000,000.00 or less:

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

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

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

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

21 (21) Except as otherwise provided in this subsection, for
22 projects for which a certificate of completion is issued before
23 January 1, 2006, and except as otherwise provided in this
24 subsection, if a qualified taxpayer is a partnership, limited
25 liability company, or subchapter S corporation, the qualified
26 taxpayer may assign all or a portion of a credit under this section
27 to its partners, members, or shareholders, based on their

1 proportionate share of ownership of the partnership, limited
2 liability company, or subchapter S corporation or based on an
3 alternative method approved by the Michigan economic growth
4 authority. A credit assignment under this subsection is irrevocable
5 and, except for a credit assignment based on a multiphase project,
6 shall be made in the tax year in which a certificate of completion
7 is issued. A qualified taxpayer may claim a portion of a credit and
8 assign the remaining credit amount. Except as otherwise provided in
9 this subsection, if the qualified taxpayer both claims and assigns
10 portions of the credit, the qualified taxpayer shall claim the
11 portion it claims in the tax year in which a certificate of
12 completion is issued or for a credit assigned and claimed for a
13 multiphase project, before the component completion certificate is
14 issued, the taxpayer shall claim the credit in the year in which
15 the credit is assigned. A partner, member, or shareholder that is
16 an assignee shall not subsequently assign a credit or any portion
17 of a credit assigned under this subsection. The credit assignment
18 under this subsection shall be made on a form prescribed by the
19 Michigan economic growth authority. The qualified taxpayer shall
20 send a copy of the completed assignment form to the Michigan
21 economic growth authority in the tax year in which the assignment
22 is made. A partner, member, or shareholder who is an assignee shall
23 attach a copy of the completed assignment form to its annual return
24 required under this act, for the tax year in which the assignment
25 is made and the assignee first claims a credit, which shall be the
26 same tax year. A credit assignment based on a credit for a
27 component of a multiphase project that is completed before January

1 1, 2006 shall be made under this subsection. In addition to all
2 other procedures under this subsection, the following apply if the
3 total of all credits for a project is more than \$10,000,000.00 but
4 \$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 of
12 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 (22) For projects approved under this section or section 38g
16 of former 1975 PA 228 for which a certificate of completion is
17 issued on and after January 1, 2006, a qualified taxpayer may
18 assign all or a portion of a credit allowed under this section or
19 section 38g(2), (3), or (33) of former 1975 PA 228 under this
20 subsection. A credit assignment under this subsection is
21 irrevocable and, except for a credit assignment based on a
22 multiphase project, shall be made in the tax year in which a
23 certificate of completion is issued unless the assignee is an
24 unknown lessee. If a qualified taxpayer wishes to assign all or a
25 portion of its credit to a lessee but the lessee is unknown in the
26 tax year in which the certificate of completion is issued, the
27 qualified taxpayer may delay claiming and assigning the credit

1 until the first tax year in which the lessee is known. A qualified
2 taxpayer may claim a portion of a credit and assign the remaining
3 credit amount. If the qualified taxpayer both claims and assigns
4 portions of the credit, the qualified taxpayer shall claim the
5 portion it claims in the tax year in which a certificate of
6 completion is issued pursuant to this section or section 38g of
7 former 1975 PA 228. An assignee may subsequently assign a credit or
8 any portion of a credit assigned under this subsection to 1 or more
9 assignees. The credit assignment or a subsequent reassignment under
10 this subsection shall be made on a form prescribed by the Michigan
11 economic growth authority. The Michigan economic growth authority
12 or its designee shall review and issue a completed assignment or
13 reassignment certificate to the assignee or reassignee. An assignee
14 or subsequent reassignee shall attach a copy of the completed
15 assignment certificate to its annual return required under this
16 act, for the tax year in which the assignment or reassignment is
17 made and the assignee or reassignee first claims a credit, which
18 shall be the same tax year. A credit assignment based on a credit
19 for a component of a multiphase project that is completed before
20 January 1, 2006 shall be made under section 38g(18) of former 1975
21 PA 228. A credit assignment based on a credit for a component of a
22 multiphase project that is completed on or after January 1, 2006
23 may be made under this section. In addition to all other procedures
24 and requirements under this section, the following apply if the
25 total of all credits for a project is more than \$10,000,000.00 but
26 \$30,000,000.00 or less:

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

1 contained in the certificate of completion.

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

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

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

12 (24) When reviewing an application for a project for
13 designation as an urban development area project, the Michigan
14 economic growth authority for projects approved under subsection
15 (4) or the chairperson of the Michigan economic growth authority or
16 his or her designee for projects approved under subsections (2) and
17 (3) shall consider all of the following criteria:

18 (a) If the project increases the density of the area by
19 promoting multistory development.

20 (b) If the project promotes mixed-use development and walkable
21 communities.

22 (c) If the project promotes sustainable redevelopment.

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

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

26 (f) Any other criteria determined by the Michigan economic
27 growth authority or the chairperson of the Michigan economic growth

1 authority.

2 (25) An eligible taxpayer that claims a credit under this
3 section is not prohibited from claiming a credit under section 431.
4 However, the eligible taxpayer shall not claim a credit under this
5 section and section 431 based on the same costs.

6 (26) Eligible investment attributable or related to the
7 operation of a professional sports stadium, and eligible investment
8 that is associated or affiliated with the operation of a
9 professional sports stadium, including, but not limited to, the
10 operation of a parking lot or retail store, shall not be used as a
11 basis for a credit under this section. Professional sports stadium
12 does not include a professional sports stadium that will no longer
13 be used by a professional sports team on and after the date that an
14 application related to that professional sports stadium is filed
15 under this section.

16 (27) Eligible investment attributable or related to the
17 operation of a casino, and eligible investment that is associated
18 or affiliated with the operation of a casino, including, but not
19 limited to, the operation of a parking lot, hotel, motel, or retail
20 store, shall not be used as a basis for a credit under this
21 section. As used in this subsection, "casino" means a casino
22 regulated by this state pursuant to the Michigan gaming control and
23 revenue act, 1996 IL 1, MCL 432.201 to 432.226.

24 (28) Eligible investment attributable or related to the
25 construction of a new landfill or the expansion of an existing
26 landfill regulated under part 115 of the natural resources and
27 environmental protection act, 1994 PA 451, MCL 324.11501 to

1 324.11550, shall not be used as a basis for a credit under this
2 section.

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

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

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

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

15 (31) For the 2008 calendar year, the total of all credits for
16 all projects approved under subsection (2) or (3) shall not exceed
17 \$63,000,000.00. For each calendar year after 2008, the total of all
18 credits for all projects approved under subsection (2) or (3) shall
19 not exceed \$40,000,000.00. If the Michigan economic growth
20 authority approves a total of all credits for all projects under
21 subsection (2) or (3) of less than \$40,000,000.00 in a calendar
22 year, the Michigan economic growth authority may carry forward for
23 1 year only the difference between \$40,000,000.00 and the total of
24 all credits for all projects under this subsection approved in the
25 immediately preceding calendar year.

26 (32) As used in this section:

27 (a) "Annual credit amount" means the maximum amount that a

1 qualified taxpayer is eligible to claim each tax year for a project
2 for which the total of all credits is more than \$10,000,000.00 but
3 \$30,000,000.00 or less, as approved under subsection (4).

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

7 (c) "Blighted", "brownfield plan", "eligible activities",
8 "facility", "functionally obsolete", "qualified local governmental
9 unit", and "response activity" mean those terms as defined in the
10 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
11 to 125.2672.

12 (d) "Eligible investment" or "eligible investments" means,
13 when made after the approval date of the brownfield plan but in any
14 event no earlier than 90 days prior to the date of the preapproval
15 letter, any demolition, construction, restoration, alteration,
16 renovation, or improvement of buildings or site improvements on
17 eligible property and the addition of machinery, equipment, and
18 fixtures to eligible property after the date that eligible
19 activities on that eligible property have started pursuant to a
20 brownfield plan under the brownfield redevelopment financing act,
21 1996 PA 381, MCL 125.2651 to 125.2672, if the costs of the eligible
22 investment are not otherwise reimbursed to the taxpayer or paid for
23 on behalf of the taxpayer from any source other than the taxpayer.
24 The addition of leased machinery, equipment, or fixtures to
25 eligible property by a lessee of the machinery, equipment, or
26 fixtures is eligible investment if the lease of the machinery,
27 equipment, or fixtures has a minimum term of 10 years or is for the

1 expected useful life of the machinery, equipment, or fixtures, and
2 if the owner of the machinery, equipment, or fixtures is not the
3 qualified taxpayer with regard to that machinery, equipment, or
4 fixtures. For projects approved after ~~the effective date of the~~
5 ~~amendatory act that added subsection (33)~~ **APRIL 8, 2008**, eligible
6 investment does not include certain soft costs of the eligible
7 investment as determined by the Michigan economic growth authority,
8 including, but not limited to, developer fees, appraisals,
9 performance bonds, closing costs, bank fees, loan fees, risk
10 contingencies, financing costs, permanent or construction period
11 interest, legal expenses, leasing or sales commissions, marketing
12 costs, professional fees, shared savings, taxes, title insurance,
13 bank inspection fees, insurance, and project management fees.
14 Notwithstanding the foregoing, eligible investment does include
15 architectural, engineering, surveying, and similar professional
16 fees.

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

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

1 captured taxable value of that property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (33) For purposes of ~~subsection~~**SUBSECTIONS (2), (3), AND (4)**,
8 eligible property means that term as defined under subsection
9 (32)(e) except that all of the following apply:

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

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

17 (ii) Property that is not in a qualified local governmental
18 unit but is within a downtown development district established
19 under 1975 PA 197, MCL 125.1651 to 125.1681, and is functionally
20 obsolete or blighted, and a component of the project on that
21 eligible property is 1 or more of the following:

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

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

27 (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 authority act, 2003 PA 258,
13 MCL 124.751 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.