

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5898

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
(MCL 208.1101 to 208.1601) by adding section 430.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 430. (1) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION
2 (6) AND SUBJECT TO THE LIMITATIONS UNDER SUBSECTION (2), FOR TAX
3 YEARS THAT BEGIN ON OR AFTER JANUARY 1, 2009, A QUALIFIED TAXPAYER
4 THAT HAS ENTERED INTO AN AGREEMENT WITH THE MICHIGAN ECONOMIC
5 GROWTH AUTHORITY THAT PROVIDES THAT THE TAXPAYER WILL CONSTRUCT AND
6 OPERATE IN THIS STATE A NEW FACILITY FOR DEVELOPMENT AND
7 MANUFACTURING OF PHOTOVOLTAIC ENERGY, PHOTOVOLTAIC SYSTEMS, OR
8 OTHER PHOTOVOLTAIC TECHNOLOGY MAY CLAIM A CREDIT AGAINST THE TAX
9 IMPOSED BY THIS ACT EQUAL TO 50% OF THE CAPITAL INVESTMENTS MADE BY

1 THE TAXPAYER IN THAT NEW FACILITY DURING THE TAX YEAR.

2 (2) THE MICHIGAN ECONOMIC GROWTH AUTHORITY SHALL NOT ENTER
3 INTO AN AGREEMENT UNDER THIS SECTION AFTER NOVEMBER 1, 2008. THE
4 TOTAL AMOUNT OF CREDITS ALLOWED UNDER THIS SECTION FOR ALL TAX
5 YEARS SHALL NOT EXCEED \$25,000,000.00. AN AGREEMENT SHALL SPECIFY
6 ALL OF THE FOLLOWING:

7 (A) THE AMOUNT OF CAPITAL INVESTMENT THAT WILL BE MADE IN A
8 NEW FACILITY ENGAGED IN THE DEVELOPMENT AND MANUFACTURING OF
9 PHOTOVOLTAIC ENERGY, PHOTOVOLTAIC SYSTEMS, AND OTHER PHOTOVOLTAIC
10 TECHNOLOGY.

11 (B) THE NUMBER OF QUALIFIED NEW JOBS AT THE FACILITY AT WHICH
12 THE INVESTMENT WILL BE MADE.

13 (C) THE TOTAL CREDIT THAT MAY BE CLAIMED UNDER THIS SECTION.

14 (3) THE CREDIT ALLOWED UNDER THIS SECTION SHALL BE TAKEN BY A
15 QUALIFIED TAXPAYER IN EQUAL INSTALLMENTS OVER 2 YEARS BEGINNING
16 WITH THE TAX YEAR IN WHICH THE CERTIFICATION WAS ISSUED. IF IN ANY
17 OF THOSE YEARS THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX
18 YEAR EXCEEDS THE TAXPAYER'S OR ASSIGNEE'S TAX LIABILITY FOR THE TAX
19 YEAR, THAT PORTION THAT EXCEEDS THE TAX LIABILITY FOR THE TAX YEAR
20 SHALL BE REFUNDED.

21 (4) A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION
22 UNLESS THE MICHIGAN ECONOMIC GROWTH AUTHORITY HAS ISSUED A
23 CERTIFICATE TO THE TAXPAYER. THE TAXPAYER SHALL ATTACH THE
24 CERTIFICATE TO THE ANNUAL RETURN FILED UNDER THIS ACT ON WHICH A
25 CREDIT UNDER THIS SECTION IS CLAIMED. THE CERTIFICATE REQUIRED
26 UNDER THIS SUBSECTION SHALL STATE ALL OF THE FOLLOWING:

27 (A) THE TAXPAYER IS LOCATED IN THIS STATE AND ENGAGED IN THE

1 DEVELOPMENT AND MANUFACTURING OF PHOTOVOLTAIC ENERGY, PHOTOVOLTAIC
2 SYSTEMS, OR OTHER PHOTOVOLTAIC TECHNOLOGY AND QUALIFIES FOR THE
3 CREDIT UNDER THIS SECTION.

4 (B) THE TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER OR
5 THE MICHIGAN DEPARTMENT OF TREASURY NUMBER ASSIGNED TO THE TAXPAYER
6 AND, FOR A TAXPAYER THAT IS A UNITARY BUSINESS GROUP, THE FEDERAL
7 EMPLOYER IDENTIFICATION NUMBER OR MICHIGAN DEPARTMENT OF TREASURY
8 NUMBER ASSIGNED TO THE MEMBER OF THE GROUP ENGAGED IN THIS STATE IN
9 THE DEVELOPMENT AND MANUFACTURING OF PHOTOVOLTAIC ENERGY,
10 PHOTOVOLTAIC SYSTEMS, OR OTHER PHOTOVOLTAIC TECHNOLOGY.

11 (C) THE TOTAL AMOUNT OF CAPITAL INVESTMENTS MADE DURING THE
12 TAX YEAR AND THE AMOUNT OF THE CREDIT UNDER THIS SECTION FOR WHICH
13 THE TAXPAYER IS ALLOWED TO CLAIM FOR THE DESIGNATED TAX YEAR.

14 (5) A TAXPAYER OR ASSIGNEE THAT CLAIMS A CREDIT UNDER THIS
15 SECTION AND SUBSEQUENTLY FAILS TO MEET THE REQUIREMENTS OF THIS
16 SECTION OR ANY OTHER CONDITIONS ESTABLISHED BY THE MICHIGAN
17 ECONOMIC GROWTH AUTHORITY IN THE AGREEMENT PROVIDED FOR IN THIS
18 SECTION IN ORDER TO OBTAIN A CERTIFICATE FOR WHICH THE CREDIT WAS
19 CLAIMED UNDER THIS SECTION MAY, AS TO BE DETERMINED BY THE MICHIGAN
20 ECONOMIC GROWTH AUTHORITY, HAVE ITS CREDIT REDUCED OR TERMINATED OR
21 HAVE A PERCENTAGE OF THE CREDIT AMOUNT PREVIOUSLY CLAIMED UNDER
22 THIS SECTION ADDED BACK TO THE TAX LIABILITY OF THE TAXPAYER IN THE
23 TAX YEAR THAT THE TAXPAYER OR ASSIGNEE FAILS TO COMPLY WITH THIS
24 SECTION.

25 (6) A QUALIFIED TAXPAYER MAY ASSIGN ALL OR A PORTION OF A
26 CREDIT ALLOWED UNDER THIS SECTION. A CREDIT ASSIGNMENT UNDER THIS
27 SUBSECTION IS IRREVOCABLE AND SHALL BE MADE IN THE TAX YEAR IN

1 WHICH A CERTIFICATE IS ISSUED. HOWEVER, A QUALIFIED TAXPAYER MAY
2 ALSO CONVEY THE RIGHT TO OBTAIN AN ASSIGNMENT OF THE CREDIT UNDER
3 THIS SECTION AFTER AN AGREEMENT HAS BEEN APPROVED BY THE MICHIGAN
4 ECONOMIC GROWTH AUTHORITY AND BEFORE A CERTIFICATE HAS BEEN ISSUED.
5 A QUALIFIED TAXPAYER MAY CLAIM A PORTION OF A CREDIT AND ASSIGN THE
6 REMAINING CREDIT AMOUNT. THE CREDIT ASSIGNMENT UNDER THIS
7 SUBSECTION SHALL BE MADE ON A FORM PRESCRIBED BY THE MICHIGAN
8 ECONOMIC GROWTH AUTHORITY. THE MICHIGAN ECONOMIC GROWTH AUTHORITY
9 OR ITS DESIGNEE SHALL REVIEW AND ISSUE A COMPLETED ASSIGNMENT
10 CERTIFICATE TO THE ASSIGNEE. AN ASSIGNEE SHALL ATTACH A COPY OF THE
11 COMPLETED ASSIGNMENT CERTIFICATE TO ITS ANNUAL RETURN REQUIRED
12 UNDER THIS ACT, FOR THE TAX YEAR IN WHICH THE ASSIGNMENT IS MADE
13 AND THE ASSIGNEE FIRST CLAIMS A CREDIT, WHICH SHALL BE THE SAME TAX
14 YEAR. IN ADDITION TO ALL OTHER PROCEDURES AND REQUIREMENTS UNDER
15 THIS SECTION, THE FOLLOWING APPLY:

16 (A) THE CREDIT SHALL BE ASSIGNED BASED ON THE SCHEDULE
17 CONTAINED IN THE CERTIFICATE.

18 (B) IF THE QUALIFIED TAXPAYER ASSIGNS ALL OR A PORTION OF THE
19 CREDIT AMOUNT, THE QUALIFIED TAXPAYER SHALL ASSIGN THE ANNUAL
20 CREDIT AMOUNT FOR EACH TAX YEAR SEPARATELY.

21 (C) MORE THAN 1 ANNUAL CREDIT AMOUNT MAY BE ASSIGNED TO ANY 1
22 ASSIGNEE, AND THE QUALIFIED TAXPAYER MAY ASSIGN ALL OR A PORTION OF
23 EACH ANNUAL CREDIT AMOUNT TO ANY ASSIGNEE.

24 (7) A TAXPAYER THAT HAS ENTERED INTO AN AGREEMENT WITH THE
25 MICHIGAN ECONOMIC GROWTH AUTHORITY FOR A CREDIT UNDER SECTIONS 432
26 THROUGH 432D IS NOT ELIGIBLE FOR THE CREDIT UNDER THIS SECTION.

27 (8) AS USED IN THIS SECTION:

1 (A) "CAPITAL INVESTMENT" MEANS THE COST, INCLUDING FABRICATION
2 AND INSTALLATION, PAID OR ACCRUED IN THE TAX YEAR OF PROPERTY OF A
3 TYPE THAT IS, OR UNDER THE INTERNAL REVENUE CODE WILL BECOME,
4 ELIGIBLE FOR DEPRECIATION, AMORTIZATION, OR ACCELERATED CAPITAL
5 COST RECOVERY FOR FEDERAL INCOME TAX PURPOSES, PROVIDED THAT THE
6 PROPERTY IS PHYSICALLY LOCATED IN THIS STATE FOR USE IN A BUSINESS
7 ACTIVITY IN THIS STATE.

8 (B) "FULL-TIME JOB" MEANS A JOB PERFORMED BY AN INDIVIDUAL FOR
9 35 HOURS OR MORE EACH WEEK AND WHOSE INCOME AND SOCIAL SECURITY
10 TAXES ARE WITHHELD BY 1 OR MORE OF THE FOLLOWING:

11 (i) A QUALIFIED TAXPAYER.

12 (ii) AN EMPLOYEE LEASING COMPANY ON BEHALF OF A QUALIFIED
13 TAXPAYER.

14 (iii) A PROFESSIONAL EMPLOYER ORGANIZATION ON BEHALF OF A
15 QUALIFIED TAXPAYER.

16 (C) "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 (D) "QUALIFIED NEW JOB" MEANS A FULL-TIME JOB CREATED BY A
20 QUALIFIED TAXPAYER AT A FACILITY OR FACILITIES THAT IS IN EXCESS OF
21 THE NUMBER OF FULL-TIME JOBS A QUALIFIED TAXPAYER MAINTAINED IN
22 THIS STATE OR AT A FACILITY PRIOR TO THE EXPANSION OR LOCATION, AS
23 DETERMINED BY THE AUTHORITY.

24 (E) "QUALIFIED TAXPAYER" MEANS A TAXPAYER THAT HAS ENTERED AN
25 AGREEMENT TO CREATE AT LEAST 700 QUALIFIED NEW JOBS AND TO MAKE AT
26 LEAST \$50,000,000.00 IN A QUALIFIED CAPITAL INVESTMENT OF WHICH
27 \$25,000,000.00 SHALL BE MADE PRIOR TO THE ISSUANCE OF A CERTIFICATE

1 UNDER THIS SECTION.

2 (F) "PHOTOVOLTAIC CELLS" MEANS AN INTEGRATED DEVICE CONSISTING
3 OF LAYERS OF SEMICONDUCTOR MATERIALS AND ELECTRIC CONSTRUCTS
4 CAPABLE OF CONVERTING INCIDENT LIGHT DIRECTLY INTO ELECTRICITY.

5 (G) "PHOTOVOLTAIC ENERGY" MEANS SOLAR ENERGY.

6 (H) "PHOTOVOLTAIC MODULES" MEANS AN ASSEMBLY OF INTERCONNECTED
7 PHOTOVOLTAIC CELLS.

8 (I) "PHOTOVOLTAIC SYSTEMS" MEANS SOLAR ENERGY DEVICES COMPOSED
9 OF 1 OR MORE PHOTOVOLTAIC CELLS OR PHOTOVOLTAIC MODULES, AND
10 INVERTER OR OTHER POWER CONDITIONING UNIT OR PHOTOVOLTAIC
11 TECHNOLOGY DESIGNED TO DELIVER POWER OF A SELECTED CURRENT AND
12 VOLTAGE, WIRES, AND OTHER ELECTRICAL CONNECTORS IN ORDER TO
13 GENERATE ELECTRICITY, HEAT OR COOL A RESIDENTIAL STRUCTURE, PROVIDE
14 HOT WATER FOR USE IN A RESIDENTIAL STRUCTURE, OR PROVIDE SOLAR
15 PROCESS HEAT. BATTERIES FOR POWER STORAGE MAY ALSO BE INCLUDED IN
16 PHOTOVOLTAIC SYSTEMS.

17 (J) "PHOTOVOLTAIC TECHNOLOGY" MEANS SOLAR POWER TECHNOLOGY
18 THAT USES PHOTOVOLTAIC CELLS AND MODULES TO CONVERT LIGHT FROM THE
19 SUN DIRECTLY INTO ELECTRICITY. PHOTOVOLTAIC TECHNOLOGY INCLUDES
20 EQUIPMENT, COMPONENT PARTS, MATERIALS, ELECTRONIC DEVICES, TESTING
21 EQUIPMENT, AND OTHER RELATED SYSTEMS THAT ARE SPECIFICALLY DESIGNED
22 OR FABRICATED AND USED PRIMARILY FOR 1 OR MORE OF THE FOLLOWING:

23 (i) THE STORAGE, GENERATION, REFORMATION, OR DISTRIBUTION OF
24 CLEAN FUELS INTEGRATED WITHIN A PHOTOVOLTAIC SYSTEM.

25 (ii) THE PROCESS OF UTILIZING PHOTOVOLTAIC ENERGY TO GENERATE
26 ELECTRICITY FOR USE BY CONSUMERS.

27 (K) "PROPERTY" MEANS SECTION 1245 PROPERTY AND SECTION 1250

1 PROPERTY AS THOSE TERMS ARE DEFINED IN SECTIONS 1245 AND 1250 OF
2 THE INTERNAL REVENUE CODE.