

HOUSE BILL No. 4420

March 28, 2017, Introduced by Reps. Tedder and Schor and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 437 (MCL 208.1437), as amended by 2009 PA 241.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 437. (1) Subject to the criteria under this section, a
2 qualified taxpayer that has unused credits or has a preapproval
3 letter issued after December 31, 2007 and before January 1, 2014,
4 or a taxpayer that received a preapproval letter prior to January
5 1, 2008 under section 38g of former 1975 PA 228 and has not
6 received a certificate of completion prior to the taxpayer's last
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 April 8, 2008, if the total
8 of all credits for a project is \$1,000,000.00 or less, 10% of the
9 cost of the qualified taxpayer's eligible investment paid or
10 accrued by the qualified taxpayer on an eligible property provided
11 that the project does not exceed the amount stated in the
12 preapproval letter, as amended. For projects approved, or amended,
13 on and after April 8, 2008, if the total of all eligible
14 investments for a project are \$10,000,000.00 or less, up to 12.5%
15 of the costs of the qualified taxpayer's eligible investment paid
16 or accrued by the qualified taxpayer on an eligible property or up
17 to 15% of the costs of the qualified taxpayer's eligible investment
18 paid or accrued by the qualified taxpayer on an eligible property
19 if the project is designated as an urban development area project
20 by the Michigan economic growth authority to the extent that the
21 project does not exceed the amount stated in the preapproval
22 letter, as amended, or, until December 31, 2010, up to 20% of the
23 costs of the qualified taxpayer's eligible investment paid or
24 accrued by the qualified taxpayer on an eligible property if the
25 project is designated as an urban development area project by the
26 Michigan economic growth authority. If eligible investment exceeds
27 the amount of eligible investment in the preapproval letter, as

1 amended, for that project, the total of all credits for the project
2 shall not exceed the total of all credits on the certificate of
3 completion.

4 (b) For projects approved before April 8, 2008, if the total
5 of all credits for a project is more than \$1,000,000.00 but
6 \$30,000,000.00 or less and, except as provided in subsection
7 (6)(b), the project is located in a qualified local governmental
8 unit, a percentage as determined by the Michigan economic growth
9 authority not to exceed 10% of the cost of the qualified taxpayer's
10 eligible investment as determined under subsection (11) paid or
11 accrued by the qualified taxpayer on an eligible property. For
12 projects approved, or amended, on and after April 8, 2008 and
13 before January 1, 2010, if the total of all eligible investments
14 for a project is more than \$10,000,000.00 but \$300,000,000.00 or
15 less, up to 12.5% of the costs of the qualified taxpayer's eligible
16 investment as determined under subsection (11) paid or accrued by
17 the qualified taxpayer on an eligible property that, except as
18 provided in subsection (6)(b), is located in a qualified local
19 governmental unit, up to 15% of the cost of the qualified
20 taxpayer's eligible investment as determined under subsection (11)
21 paid or accrued by the qualified taxpayer on an eligible property
22 if the project is designated as an urban development area project
23 by the Michigan economic growth authority, or, until December 31,
24 2010, up to 20% of the costs of the qualified taxpayer's eligible
25 investment as determined under subsection (11) paid or accrued by
26 the 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. For projects approved, or amended, on
2 and after January 1, 2010, if the total of all eligible investments
3 for a project is more than \$10,000,000.00 but \$100,000,000.00 or
4 less, up to 12.5% of the costs of the qualified taxpayer's eligible
5 investment as determined under subsection (11) paid or accrued by
6 the qualified taxpayer on an eligible property that, except as
7 provided in subsection (6) (b), is located in a qualified local
8 governmental unit, up to 15% of the cost of the qualified
9 taxpayer's eligible investment as determined under subsection (11)
10 paid or accrued by the qualified taxpayer on an eligible property
11 if the project is designated as an urban development area project
12 by the Michigan economic growth authority, or, until December 31,
13 2010, up to 20% of the costs of the qualified taxpayer's eligible
14 investment as determined under subsection (11) paid or accrued by
15 the qualified taxpayer on an eligible property if the project is
16 designated as an urban development area project by the Michigan
17 economic growth authority. If eligible investment exceeds the
18 amount of eligible investment in the preapproval letter, as
19 amended, for that project, the total of all credits for the project
20 shall not exceed the total of all credits on the certificate of
21 completion.

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

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

24 (3) If the cost of a project will be for more than
25 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer
26 shall apply to the Michigan economic growth authority for approval
27 of the project under this subsection. An application under this

1 subsection shall state whether the project is a multiphase project.
2 Subject to the limitation provided under subsection (31), the
3 chairperson of the Michigan economic growth authority or his or her
4 designee is authorized to approve an application or project under
5 this subsection. Only the chairperson of the Michigan economic
6 growth authority is authorized to deny an application or project
7 under this subsection. A project shall be approved or denied not
8 more than 45 days after receipt of the application. If the
9 chairperson of the Michigan economic growth authority or his or her
10 designee does not approve or deny an application within 45 days
11 after the application is received by the Michigan economic growth
12 authority, the application is considered approved as written. The
13 criteria in subsection (7) shall be used when approving projects
14 under this subsection. When approving projects under this
15 subsection, priority shall be given to projects on a facility. The
16 total of all credits for an approved project under this subsection
17 shall not exceed the amounts authorized under subsection (1)(a). A
18 taxpayer may apply under this subsection instead of subsection (4)
19 for approval of a project that will be for more than
20 \$10,000,000.00, but the total of all credits for that project shall
21 not exceed the amounts authorized under subsection (1)(a). If the
22 chairperson of the Michigan economic growth authority or his or her
23 designee approves a project under this subsection, the chairperson
24 of the Michigan economic growth authority or his or her designee
25 shall issue a preapproval letter that states that the taxpayer is a
26 qualified taxpayer; the maximum total eligible investment for the
27 project on which credits may be claimed and the maximum total of

1 all credits for the project when the project is completed and a
2 certificate of completion is issued; and the project number
3 assigned by the Michigan economic growth authority. If a project is
4 denied under this subsection, a taxpayer is not prohibited from
5 subsequently applying under this subsection or subsection (4) for
6 the same project or for another project.

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

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

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

27 (6) The Michigan economic growth authority may approve not

1 more than 20 projects each calendar year through December 31, 2009,
2 not more than 19 projects for the 2010 calendar year, and, except
3 as otherwise provided under subdivision (d), not more than 17
4 projects for each calendar year after December 31, 2010 under
5 subsection (4), and the following limitations apply:

6 (a) Of the projects allowed under this subsection, the total
7 of all credits for each project may be more than \$10,000,000.00 but
8 \$30,000,000.00 or less for only 1 project before December 31, 2009.

9 (b) Of the projects allowed under this subsection, up to 3
10 projects may be approved for projects that are not in a qualified
11 local governmental unit if the property is a facility for which
12 eligible activities are identified in a brownfield plan or, for 1
13 of the 3 projects, if the property is not a facility but is
14 functionally obsolete or blighted, property identified in a
15 brownfield plan. For purposes of this subdivision, a facility
16 includes a building or complex of buildings that was used by a
17 state or federal agency and that is no longer being used for the
18 purpose for which it was used by the state or federal agency.

19 (c) The project allowed under subdivision (a) may also qualify
20 under subdivision (b).

21 (d) If the Michigan economic growth authority determines that
22 there are previously issued credits authorized under section 434(6)
23 available, the Michigan economic growth authority may approve 2
24 additional projects for each calendar year after December 31, 2010.
25 As used in this subdivision, "previously issued credits" means the
26 total amount of credits authorized by the Michigan economic growth
27 authority for a taxpayer under section 434(6) that meets all of the

1 following:

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

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

7 (7) The Michigan economic growth authority shall review all
8 applications for projects under subsection (4) and, if an
9 application is approved, shall determine the maximum total of all
10 credits for that project. Before approving a project for which the
11 total of all credits will be more than \$10,000,000.00 but
12 \$30,000,000.00 or less only, the Michigan economic growth authority
13 shall determine that the project would not occur in this state
14 without the tax credit offered under subsection (4). The Michigan
15 economic growth authority shall consider the following criteria to
16 the extent reasonably applicable to the type of project proposed
17 when approving a project under subsection (4), and the chairperson
18 of the Michigan economic growth authority or his or her designee
19 shall consider the following criteria to the extent reasonably
20 applicable to the type of project proposed when approving a project
21 under subsection (2) or (3) or when considering an amendment to a
22 project under subsection (9):

23 (a) The overall benefit to the public.

24 (b) The extent of reuse of vacant buildings and redevelopment
25 of blighted property.

26 (c) Creation of jobs.

27 (d) Whether the eligible property is in an area of high

1 unemployment.

2 (e) The level and extent of contamination alleviated by the
3 qualified taxpayer's eligible activities to the extent known to the
4 qualified taxpayer.

5 (f) The level of private sector contribution.

6 (g) The cost gap that exists between the site and a similar
7 greenfield site as determined by the Michigan economic growth
8 authority.

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

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

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

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

21 (9) If, after a taxpayer's project has been approved and the
22 taxpayer has received a preapproval letter but before the taxpayer
23 has made an eligible investment, other than soft costs, at the
24 property, the taxpayer determines that the project cannot be
25 completed as preapproved, the taxpayer may petition the Michigan
26 economic growth authority to amend the project and the preapproval
27 letter to increase the maximum total eligible investment for the

1 project on which credits may be claimed and the maximum total of
2 all credits for the project. A taxpayer may petition the Michigan
3 economic growth authority to make any other amendments to the
4 project or preapproval letter at any time before a certificate of
5 completion is issued. Amendments to the project or preapproval
6 letter may include, but are not limited to, extending the duration
7 of time provided to complete the project, as long as that extension
8 does not exceed 10 years from the date of the preapproval letter.
9 **HOWEVER, IF A PROJECT WAS APPROVED PRIOR TO DECEMBER 31, 2008 FOR**
10 **20% OF THE QUALIFIED TAXPAYER'S ELIGIBLE INVESTMENT AND A TOTAL OF**
11 **LESS THAN \$2,000,000.00 FOR ALL CREDITS FOR THAT PROJECT AND THAT**
12 **PROJECT HAS RECEIVED A FUNDING RESERVATION FOR AN ALLOCATION OF THE**
13 **FEDERAL LOW-INCOME HOUSING TAX CREDIT ADMINISTERED BY THE MICHIGAN**
14 **STATE HOUSING DEVELOPMENT AUTHORITY OF MORE THAN \$1,100,000.00,**
15 **THEN THAT PROJECT MAY BE AMENDED TO EXTEND THE DURATION OF TIME**
16 **PROVIDED TO COMPLETE THE PROJECT TO THE PLACED-IN-SERVICE DATE OF**
17 **THE CARRYOVER ALLOCATION AGREEMENT FOR THE FEDERAL LOW-INCOME**
18 **HOUSING TAX CREDIT.**

19 (10) A project may be a multiphase project. If a project is a
20 multiphase project, when each component of the multiphase project
21 is completed, the taxpayer shall submit documentation that the
22 component is complete, an accounting of the cost of the component,
23 and the eligible investment for the component of each taxpayer
24 eligible for a credit for the project of which the component is a
25 part to the Michigan economic growth authority or the designee of
26 the Michigan economic growth authority, who shall verify that the
27 component is complete. When the completion of the component is

1 verified, a component completion certificate shall be issued to the
2 qualified taxpayer which shall state that the taxpayer is a
3 qualified taxpayer, the credit amount for the component, the
4 qualified taxpayer's federal employer identification number or the
5 Michigan treasury number assigned to the taxpayer, and the project
6 number. The taxpayer may assign all or part of the credit for a
7 multiphase project as provided in this section after a component
8 completion certificate for a component is issued. The qualified
9 taxpayer may transfer ownership of or lease the completed component
10 and assign a proportionate share of the credit for the entire
11 project to the qualified taxpayer that is the new owner or lessee.
12 A multiphase project shall not be divided into more than 10
13 components. A component is considered to be completed when a
14 certificate of occupancy has been issued by the local municipality
15 in which the project is located for all of the buildings or
16 facilities that comprise the completed component and a component
17 completion certificate is issued or the chairperson of the Michigan
18 economic growth authority or his or her designee, for projects
19 approved under subsection (2) or (3), or the Michigan economic
20 growth authority, for projects approved under subsection (4),
21 verifies that the component is complete. A credit assigned based on
22 a multiphase project shall be claimed by the assignee in the tax
23 year in which the assignment is made. The total of all credits for
24 a multiphase project shall not exceed the amount stated in the
25 preapproval letter, as amended, for the project under subsection
26 (1). If all components of a multiphase project are not completed by
27 10 years after the date on which the preapproval letter, as

1 amended, if applicable, for the project was issued, the qualified
2 taxpayer that received the preapproval letter for the project shall
3 pay to the state treasurer, as a penalty, an amount equal to the
4 sum of all credits claimed and assigned for all components of the
5 multiphase project and no credits based on that multiphase project
6 shall be claimed after that date by the qualified taxpayer or any
7 assignee of the qualified taxpayer. The penalty under this
8 subsection is subject to interest on the amount of the credit
9 claimed or assigned determined individually for each component at
10 the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on
11 the date that the credit for that component was claimed or
12 assigned. As used in this subsection, "proportionate share" means
13 the same percentage of the total of all credits for the project
14 that the qualified investment for the completed component is of the
15 total qualified investment stated in the preapproval letter, as
16 amended, for the entire project.

17 (11) When a project under this section is completed, the
18 taxpayer shall submit documentation that the project is completed,
19 an accounting of the cost of the project, the eligible investment
20 of each taxpayer if there is more than 1 taxpayer eligible for a
21 credit for the project, and, if the taxpayer is not the owner or
22 lessee of the eligible property on which the eligible investment
23 was made at the time the project is completed, that the taxpayer
24 was the owner or lessee of, or was a party to an agreement to
25 purchase or lease, that eligible property when all eligible
26 investment of the taxpayer was made. The chairperson of the
27 Michigan economic growth authority or his or her designee, for

1 projects approved under subsection (2) or (3), or the Michigan
2 economic growth authority, for projects approved under subsection
3 (4), shall verify that the project is completed. The Michigan
4 economic growth authority shall conduct an on-site inspection as
5 part of the verification process for projects approved under
6 subsection (4). When the completion of the project is verified, a
7 certificate of completion shall be issued to each qualified
8 taxpayer that has made eligible investment on that eligible
9 property. The certificate of completion shall state the total
10 amount of all credits for the project and that total shall not
11 exceed the maximum total of all credits listed in the preapproval
12 letter for the project under subsection (2), (3), or (4) as
13 applicable and as amended under subsection (9) and shall state all
14 of the following:

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

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

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

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

21 (e) The project number.

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

26 (g) For a multiphase project under subsection (10), the amount
27 of each credit assigned and the amount of all credits claimed in

1 each tax year before the year in which the project is completed.

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

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

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

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

1 provided for under this section and the component completion
2 certificate provided for in subsection (10) to the annual return
3 filed under this act on which the credit is claimed but is not
4 required to file a copy of a certificate of completion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 assign the remaining credit amount. Except as otherwise provided in
2 this subsection, if the qualified taxpayer both claims and assigns
3 portions of the credit, the qualified taxpayer shall claim the
4 portion it claims in the tax year in which a certificate of
5 completion is issued or for a credit assigned and claimed for a
6 multiphase project, before the component completion certificate is
7 issued, the taxpayer shall claim the credit in the year in which
8 the credit is assigned. A partner, member, or shareholder that is
9 an assignee shall not subsequently assign a credit or any portion
10 of a credit assigned under this subsection. The credit assignment
11 under this subsection shall be made on a form prescribed by the
12 Michigan economic growth authority. The qualified taxpayer shall
13 send a copy of the completed assignment form to the Michigan
14 economic growth authority in the tax year in which the assignment
15 is made. A partner, member, or shareholder who is an assignee shall
16 attach a copy of the completed assignment form to its annual return
17 required under this act, for the tax year in which the assignment
18 is made and the assignee first claims a credit, which shall be the
19 same tax year. A credit assignment based on a credit for a
20 component of a multiphase project that is completed before January
21 1, 2006 shall be made under this subsection. In addition to all
22 other procedures under this subsection, the following apply if the
23 total of all credits for a project is more than \$10,000,000.00 but
24 \$30,000,000.00 or less:

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

27 (b) If the qualified taxpayer assigns all or a portion of the

1 credit amount, the qualified taxpayer shall assign the annual
2 credit amount for each tax year separately.

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

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

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

1 any portion of a credit assigned under this subsection to 1 or more
2 assignees. The credit assignment or a subsequent reassignment under
3 this subsection shall be made on a form prescribed by the Michigan
4 economic growth authority. The Michigan economic growth authority
5 or its designee shall review and issue a completed assignment or
6 reassignment certificate to the assignee or reassignee. An assignee
7 or subsequent reassignee shall attach a copy of the completed
8 assignment certificate to its annual return required under this
9 act, for the tax year in which the assignment or reassignment is
10 made and the assignee or reassignee first claims a credit, which
11 shall be the same tax year. A credit assignment based on a credit
12 for a component of a multiphase project that is completed before
13 January 1, 2006 shall be made under section 38g(18) of former 1975
14 PA 228. A credit assignment based on a credit for a component of a
15 multiphase project that is completed on or after January 1, 2006
16 may be made under this section. In addition to all other procedures
17 and requirements under this section, the following apply if the
18 total of all credits for a project is more than \$10,000,000.00 but
19 \$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 of
27 each annual credit amount to any assignee.

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

5 (24) When reviewing an application for a project for
6 designation as an urban development area project, the Michigan
7 economic growth authority for projects approved under subsection
8 (4) or the chairperson of the Michigan economic growth authority or
9 his or her designee for projects approved under subsections (2) and
10 (3) shall consider all of the following criteria:

11 (a) If the project increases the density of the area by
12 promoting multistory development.

13 (b) If the project promotes mixed-use development and walkable
14 communities.

15 (c) If the project promotes sustainable redevelopment.

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

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

19 (f) Any other criteria determined by the Michigan economic
20 growth authority or the chairperson of the Michigan economic growth
21 authority.

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

26 (26) Eligible investment attributable or related to the
27 operation of a professional sports stadium, and eligible investment

1 that is associated or affiliated with the operation of a
2 professional sports stadium, including, but not limited to, the
3 operation of a parking lot or retail store, shall not be used as a
4 basis for a credit under this section. Professional sports stadium
5 does not include a professional sports stadium that will no longer
6 be used by a professional sports team on and after the date that an
7 application related to that professional sports stadium is filed
8 under this section.

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

17 (28) Eligible investment attributable or related to the
18 construction of a new landfill or the expansion of an existing
19 landfill regulated under part 115 of the natural resources and
20 environmental protection act, 1994 PA 451, MCL 324.11501 to
21 ~~324.11550~~, **324.11554**, shall not be used as a basis for a credit
22 under this section.

23 (29) The Michigan economic growth authority annually shall
24 prepare and submit to the house of representatives and senate
25 committees responsible for tax policy and economic development
26 issues a report on the credits under subsections (2), (3), and (4).
27 The report shall include, but is not limited to, all of the

1 following:

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

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

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

8 (31) For the 2008 calendar year, the total of all credits for
9 all projects approved under subsection (2) or (3) shall not exceed
10 \$63,000,000.00. For each calendar year after 2008, the total of all
11 credits for all projects approved under subsection (2) or (3) shall
12 not exceed \$40,000,000.00. If the Michigan economic growth
13 authority approves a total of all credits for all projects under
14 subsection (2) or (3) of less than \$40,000,000.00 in a calendar
15 year, the Michigan economic growth authority may carry forward for
16 1 year only the difference between \$40,000,000.00 and the total of
17 all credits for all projects under this subsection approved in the
18 immediately preceding calendar year.

19 (32) As used in this section:

20 (a) "Annual credit amount" means the maximum amount that a
21 qualified taxpayer is eligible to claim each tax year for a project
22 for which the total of all credits is more than \$10,000,000.00 but
23 \$30,000,000.00 or less, as approved under subsection (4).

24 (b) "Authority" means a brownfield redevelopment authority
25 created under the brownfield redevelopment financing act, 1996 PA
26 381, MCL 125.2651 to 125.2672.

27 (c) "Blighted", "brownfield plan", "eligible activities",

1 "facility", "functionally obsolete", "qualified local governmental
2 unit", and "response activity" mean those terms as defined in the
3 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
4 to 125.2672.

5 (d) "Eligible investment" or "eligible investments" means,
6 when made after the approval date of the brownfield plan but in any
7 event no earlier than 90 days prior to the date of the preapproval
8 letter, any demolition, construction, restoration, alteration,
9 renovation, or improvement of buildings or site improvements on
10 eligible property and the addition of machinery, equipment, and
11 fixtures to eligible property after the date that eligible
12 activities on that eligible property have started pursuant to a
13 brownfield plan under the brownfield redevelopment financing act,
14 1996 PA 381, MCL 125.2651 to 125.2672, if the costs of the eligible
15 investment are not otherwise reimbursed to the taxpayer or paid for
16 on behalf of the taxpayer from any source other than the taxpayer.
17 The addition of leased machinery, equipment, or fixtures to
18 eligible property by a lessee of the machinery, equipment, or
19 fixtures is eligible investment if the lease of the machinery,
20 equipment, or fixtures has a minimum term of 10 years or is for the
21 expected useful life of the machinery, equipment, or fixtures, and
22 if the owner of the machinery, equipment, or fixtures is not the
23 qualified taxpayer with regard to that machinery, equipment, or
24 fixtures. For projects approved after April 8, 2008, eligible
25 investment does not include certain soft costs of the eligible
26 investment as determined by the Michigan economic growth authority,
27 including, but not limited to, developer fees, appraisals,

1 performance bonds, closing costs, bank fees, loan fees, risk
2 contingencies, financing costs, permanent or construction period
3 interest, legal expenses, leasing or sales commissions, marketing
4 costs, professional fees, shared savings, taxes, title insurance,
5 bank inspection fees, insurance, and project management fees.
6 Notwithstanding the foregoing, eligible investment does include
7 architectural, engineering, surveying, and similar professional
8 fees.

9 (e) "Eligible property", except as otherwise provided under
10 subsection (33), means property for which eligible activities are
11 identified under a brownfield plan that was used or is currently
12 used for commercial, industrial, public, or residential purposes,
13 including personal property located on the property, to the extent
14 included in the brownfield plan, and that is 1 or more of the
15 following:

16 (i) Is in a qualified local governmental unit and is a
17 facility, functionally obsolete, or blighted and includes parcels
18 that are adjacent or contiguous to that property if the development
19 of the adjacent and contiguous parcels is estimated to increase the
20 captured taxable value of that property.

21 (ii) Is not in a qualified local governmental unit and is a
22 facility, and includes parcels that are adjacent or contiguous to
23 that property if the development of the adjacent and contiguous
24 parcels is estimated to increase the captured taxable value of that
25 property.

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

1 (f) "Last tax year" means the taxpayer's tax year under former
2 1975 PA 228 that begins after December 31, 2006 and before January
3 1, 2008.

4 (g) "Michigan economic growth authority" means the Michigan
5 economic growth authority created in the Michigan economic growth
6 authority act, 1995 PA 24, MCL 207.801 to 207.810.

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

10 (i) "Personal property" means that term as defined in section
11 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
12 that personal property does not include either of the following:

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

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

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

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

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

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

27 (l) "Qualified taxpayer" means a taxpayer that meets both of

1 the following criteria:

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

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

20 (m) "Urban development area project" means a project located
21 on eligible property in the downtown or traditional central
22 business district of a qualified local governmental unit or county
23 seat or along a traditional commercial corridor of a qualified
24 local governmental unit or county seat as determined by the
25 Michigan economic growth authority or the chairperson of the
26 Michigan economic growth authority or his or her designee.

27 (33) For purposes of subsection (2), eligible property means

1 that term as defined under subsection (32) (e) except that all of
2 the following apply:

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

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

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

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

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

20 (C) Lead or asbestos abatement.

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

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

27 (b) Eligible property includes parcels that are adjacent or

1 contiguous to the eligible property if the development of the
2 adjacent or contiguous parcels is estimated to increase the
3 captured taxable value of the property or tax reverted property
4 owned or under the control of a land bank fast track authority
5 pursuant to the land bank fast track act, 2003 PA 258, MCL 124.751
6 to 124.774.

7 (c) Eligible property includes, to the extent included in the
8 brownfield plan, personal property located on the eligible
9 property.

10 (d) Eligible property does not include qualified agricultural
11 property exempt under section 7ee of the general property tax act,
12 1893 PA 206, MCL 211.7ee, from the tax levied by a local school
13 district for school operating purposes to the extent provided under
14 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.