

HOUSE BILL No. 5787

February 21, 2008, Introduced by Reps. Corriveau, Miller, LeBlanc, McDowell, Byrum, Byrnes, Wojno, Lemmons, Scott, Ebli, Donigan, Vagnozzi, Young, Simpson, Hopgood, Spade, Gonzales, Sheltroun, Brown, Espinoza, Bennett, Mayes, Valentine, Polidori, Cheeks, Hammon, Dean, Alma Smith, Clack, Hammel, Melton, Coulouris, Meadows, Bauer, Griffin, Kathleen Law, Meisner and Angerer and referred to the Committee on Commerce.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 435 (MCL 208.1435), as amended by 2007 PA 216.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 435. (1) A qualified taxpayer with a rehabilitation plan
2 certified after December 31, 2007 or a qualified taxpayer that has
3 a rehabilitation plan certified before January 1, 2008 under
4 section 39c of former 1975 PA 228 for the rehabilitation of an
5 historic resource for which a certification of completed
6 rehabilitation has been issued after the end of the taxpayer's last
7 tax year may credit against the tax imposed by this act the amount
8 determined pursuant to subsection (2) for the qualified
9 expenditures for the rehabilitation of an historic resource

1 pursuant to the rehabilitation plan in the year in which the
2 certification of completed rehabilitation of the historic resource
3 is issued provided that the certification of completed
4 rehabilitation was issued not more than 5 years after the
5 rehabilitation plan was certified by the Michigan historical
6 center.

7 (2) The credit allowed under this section shall be 25% of the
8 qualified expenditures that are eligible for the credit under
9 section 47(a)(2) of the internal revenue code if the taxpayer is
10 eligible for the credit under section 47(a)(2) of the internal
11 revenue code or, if the taxpayer is not eligible for the credit
12 under section 47(a)(2) of the internal revenue code, 25% of the
13 qualified expenditures that would qualify under section 47(a)(2) of
14 the internal revenue code except that the expenditures are made to
15 an historic resource that is not eligible for the credit under
16 section 47(a)(2) of the internal revenue code, subject to both of
17 the following:

18 (a) A taxpayer with qualified expenditures that are eligible
19 for the credit under section 47(a)(2) of the internal revenue code
20 may not claim a credit under this section for those qualified
21 expenditures unless the taxpayer has claimed and received a credit
22 for those qualified expenditures under section 47(a)(2) of the
23 internal revenue code.

24 (b) A credit under this section shall be reduced by the amount
25 of a credit received by the taxpayer for the same qualified
26 expenditures under section 47(a)(2) of the internal revenue code.

27 (3) ~~TO~~ **SUBJECT TO SUBSECTION (5), TO** be eligible for the

1 credit under this section, the taxpayer shall apply to and receive
2 from the Michigan historical center certification that the historic
3 significance, the rehabilitation plan, and the completed
4 rehabilitation of the historic resource meet the criteria under
5 subsection ~~(6)~~-(8) and either of the following:

6 (a) All of the following criteria:

7 (i) The historic resource contributes to the significance of
8 the historic district in which it is located.

9 (ii) Both the rehabilitation plan and completed rehabilitation
10 of the historic resource meet the federal secretary of the
11 interior's standards for rehabilitation and guidelines for
12 rehabilitating historic buildings, 36 CFR part 67.

13 (iii) All rehabilitation work has been done to or within the
14 walls, boundaries, or structures of the historic resource or to
15 historic resources located within the property boundaries of the
16 property.

17 (b) The taxpayer has received certification from the national
18 park service that the historic resource's significance, the
19 rehabilitation plan, and the completed rehabilitation qualify for
20 the credit allowed under section 47(a)(2) of the internal revenue
21 code.

22 **(4) BEGINNING JULY 1, 2008, THE CENTER SHALL GIVE PREFERENCE**
23 **TO AN APPLICANT IF THE APPLICANT AGREES, IN WRITING, TO DO ALL OF**
24 **THE FOLLOWING:**

25 **(A) HIRE ONLY RESIDENTS OF THIS STATE TO ASSIST IN THE**
26 **REHABILITATION OF A HISTORIC RESOURCE UNLESS THE CENTER DETERMINES**
27 **THAT THE REHABILITATION CANNOT BE COMPLETED BY USING ONLY RESIDENTS**

1 OF THIS STATE.

2 (B) CONTRACT WITH BUSINESSES THAT AGREE TO HIRE ONLY RESIDENTS
3 OF THIS STATE TO ASSIST IN THE REHABILITATION OF A HISTORIC
4 RESOURCE UNLESS THE CENTER DETERMINES THAT THE REHABILITATION
5 CANNOT BE COMPLETED BY USING ONLY RESIDENTS OF THIS STATE.

6 (5) A QUALIFIED TAXPAYER THAT IS A BUSINESS IS NOT ABLE TO
7 CLAIM THE CREDIT UNDER THIS SECTION UNLESS THAT QUALIFIED TAXPAYER
8 ENTERS INTO A CONTRACT WITH THE CENTER THAT PROVIDES THAT, FOR ANY
9 WORK ON THE REHABILITATION PLAN, THE QUALIFIED TAXPAYER WILL NOT
10 HIRE OR CONTRACT WITH ANY BUSINESS ENTITY THAT HIRES AN INDIVIDUAL
11 WHO IS NOT AUTHORIZED UNDER FEDERAL LAW TO WORK IN THE UNITED
12 STATES AND THAT THE QUALIFIED TAXPAYER WILL COMPLY IN GOOD FAITH
13 WITH THE VERIFICATION REQUIREMENTS IN 8 USC 1324A TO ENSURE THAT
14 ALL EMPLOYEES HIRED BY THE QUALIFIED TAXPAYER OR EMPLOYEES OF ANY
15 CONTRACTORS HIRED BY THE QUALIFIED TAXPAYER ARE AUTHORIZED TO WORK
16 IN THE UNITED STATES. THE CONTRACT WITH THE QUALIFIED TAXPAYER
17 DESCRIBED IN THIS SUBSECTION SHALL ALSO CONTAIN A REMEDY PROVISION
18 THAT PROVIDES FOR ALL OF, BUT NOT LIMITED TO, THE FOLLOWING:

19 (A) A REQUIREMENT THAT THE QUALIFIED TAXPAYER IS NOT ELIGIBLE
20 TO CLAIM ANY FUTURE CREDITS UNDER THIS SECTION IF THE QUALIFIED
21 TAXPAYER IS DETERMINED TO BE IN VIOLATION OF THE PROVISIONS OF THIS
22 SECTION, AS DETERMINED BY THE CENTER.

23 (B) A REQUIREMENT THAT THE QUALIFIED TAXPAYER MAY BE REQUIRED
24 TO REPAY SOME OR ALL OF THE CREDITS RECEIVED UNDER THIS SECTION IF
25 THE QUALIFIED TAXPAYER IS DETERMINED TO BE IN VIOLATION OF THE
26 PROVISIONS OF THIS SECTION AS DETERMINED BY THE CENTER.

27 (6) ~~(4)~~—If a qualified taxpayer is eligible for the credit

1 allowed under section 47(a)(2) of the internal revenue code, the
2 qualified taxpayer shall file for certification with the center to
3 qualify for the credit allowed under section 47(a)(2) of the
4 internal revenue code. If the qualified taxpayer has previously
5 filed for certification with the center to qualify for the credit
6 allowed under section 47(a)(2) of the internal revenue code,
7 additional filing for the credit allowed under this section is not
8 required.

9 (7) ~~(5)~~—The center may inspect an historic resource at any
10 time during the rehabilitation process and may revoke certification
11 of completed rehabilitation if the rehabilitation was not
12 undertaken as represented in the rehabilitation plan or if
13 unapproved alterations to the completed rehabilitation are made
14 during the 5 years after the tax year in which the credit was
15 claimed. The center shall promptly notify the department of a
16 revocation.

17 (8) ~~(6)~~—Qualified expenditures for the rehabilitation of an
18 historic resource may be used to calculate the credit under this
19 section if the historic resource meets 1 of the criteria listed in
20 subdivision (a) and 1 of the criteria listed in subdivision (b):

21 (a) The resource is 1 of the following during the tax year in
22 which a credit under this section is claimed for those qualified
23 expenditures:

24 (i) Individually listed on the national register of historic
25 places or state register of historic sites.

26 (ii) A contributing resource located within an historic
27 district listed on the national register of historic places or the

1 state register of historic sites.

2 (iii) A contributing resource located within an historic
3 district designated by a local unit pursuant to an ordinance
4 adopted under the local historic districts act, 1970 PA 169, MCL
5 399.201 to 399.215.

6 (b) The resource meets 1 of the following criteria during the
7 tax year in which a credit under this section is claimed for those
8 qualified expenditures:

9 (i) The historic resource is located in a designated historic
10 district in a local unit of government with an existing ordinance
11 under the local historic districts act, 1970 PA 169, MCL 399.201 to
12 399.215.

13 (ii) The historic resource is located in an incorporated local
14 unit of government that does not have an ordinance under the local
15 historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and
16 has a population of less than 5,000.

17 (iii) The historic resource is located in an unincorporated
18 local unit of government.

19 (iv) The historic resource is located in an incorporated local
20 unit of government that does not have an ordinance under the local
21 historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and is
22 located within the boundaries of an association that has been
23 chartered under 1889 PA 39, MCL 455.51 to 455.72.

24 (9) ~~(7)~~—If a qualified taxpayer is a partnership, limited
25 liability company, or subchapter S corporation, the qualified
26 taxpayer may assign all or any portion of a credit allowed under
27 this section to its partners, members, or shareholders, based on

1 the partner's, member's, or shareholder's proportionate share of
2 ownership or based on an alternative method approved by the
3 department. A credit assignment under this subsection is
4 irrevocable and shall be made in the tax year in which a
5 certificate of completed rehabilitation is issued. A qualified
6 taxpayer may claim a portion of a credit and assign the remaining
7 credit amount. A partner, member, or shareholder that is an
8 assignee shall not subsequently assign a credit or any portion of a
9 credit assigned to the partner, member, or shareholder under this
10 subsection. A credit amount assigned under this subsection may be
11 claimed against the partner's, member's, or shareholder's tax
12 liability under this act or under the income tax act of 1967, 1967
13 PA 281, MCL 206.1 to 206.532. A credit assignment under this
14 subsection shall be made on a form prescribed by the department.
15 The qualified taxpayer and assignees shall send a copy of the
16 completed assignment form to the department in the tax year in
17 which the assignment is made and attach a copy of the completed
18 assignment form to the annual return required to be filed under
19 this act for that tax year.

20 (10) ~~(8)~~—If the credit allowed under this section for the tax
21 year and any unused carryforward of the credit allowed by this
22 section exceed the taxpayer's tax liability for the tax year, that
23 portion that exceeds the tax liability for the tax year shall not
24 be refunded but may be carried forward to offset tax liability in
25 subsequent tax years for 10 years or until used up, whichever
26 occurs first. An unused carryforward of a credit under section 39c
27 of former 1975 PA 228 that was unused at the end of the last tax

1 year for which former 1975 PA 228 was in effect may be claimed
2 against the tax imposed under this act for the years the
3 carryforward would have been available under section 39c of former
4 1975 PA 228.

5 (11) ~~(9)~~—If the taxpayer sells an historic resource for which
6 a credit was claimed under this section or under section 39c of
7 former 1975 PA 228 less than 5 years after the year in which the
8 credit was claimed, the following percentage of the credit amount
9 previously claimed relative to that historic resource shall be
10 added back to the tax liability of the taxpayer in the year of the
11 sale:

12 (a) If the sale is less than 1 year after the year in which
13 the credit was claimed, 100%.

14 (b) If the sale is at least 1 year but less than 2 years after
15 the year in which the credit was claimed, 80%.

16 (c) If the sale is at least 2 years but less than 3 years
17 after the year in which the credit was claimed, 60%.

18 (d) If the sale is at least 3 years but less than 4 years
19 after the year in which the credit was claimed, 40%.

20 (e) If the sale is at least 4 years but less than 5 years
21 after the year in which the credit was claimed, 20%.

22 (f) If the sale is 5 years or more after the year in which the
23 credit was claimed, an addback to the taxpayer's tax liability
24 shall not be made.

25 (12) ~~(10)~~—If a certification of completed rehabilitation is
26 revoked under subsection ~~(5)~~ ~~(7)~~ less than 5 years after the year
27 in which a credit was claimed under this section or under section

1 39c of former 1975 PA 228, the following percentage of the credit
2 amount previously claimed relative to that historic resource shall
3 be added back to the tax liability of the taxpayer in the year of
4 the revocation:

5 (a) If the revocation is less than 1 year after the year in
6 which the credit was claimed, 100%.

7 (b) If the revocation is at least 1 year but less than 2 years
8 after the year in which the credit was claimed, 80%.

9 (c) If the revocation is at least 2 years but less than 3
10 years after the year in which the credit was claimed, 60%.

11 (d) If the revocation is at least 3 years but less than 4
12 years after the year in which the credit was claimed, 40%.

13 (e) If the revocation is at least 4 years but less than 5
14 years after the year in which the credit was claimed, 20%.

15 (f) If the revocation is 5 years or more after the year in
16 which the credit was claimed, an addback to the taxpayer's tax
17 liability shall not be made.

18 (13) ~~(11)~~—The department of history, arts, and libraries
19 through the Michigan historical center may impose a fee to cover
20 the administrative cost of implementing the program under this
21 section.

22 (14) ~~(12)~~—The qualified taxpayer shall attach all of the
23 following to the qualified taxpayer's annual return required under
24 this act or under the income tax act of 1967, 1967 PA 281, MCL
25 206.1 to 206.532, if applicable, on which the credit is claimed:

26 (a) Certification of completed rehabilitation.

27 (b) Certification of historic significance related to the

1 historic resource and the qualified expenditures used to claim a
2 credit under this section.

3 (c) A completed assignment form if the qualified taxpayer has
4 assigned any portion of a credit allowed under this section to a
5 partner, member, or shareholder or if the taxpayer is an assignee
6 of any portion of a credit allowed under this section.

7 (15) ~~(13)~~—The department of history, arts, and libraries shall
8 promulgate rules to implement this section pursuant to the
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
10 24.328.

11 (16) ~~(14)~~—The total of the credits claimed under this section
12 and section 266 of the income tax act of 1967, 1967 PA 281, MCL
13 206.266, for a rehabilitation project shall not exceed 25% of the
14 total qualified expenditures eligible for the credit under this
15 section for that rehabilitation project.

16 (17) ~~(15)~~—The department of history, arts, and libraries
17 through the Michigan historical center shall report all of the
18 following to the legislature annually for the immediately preceding
19 state fiscal year:

20 (a) The fee schedule used by the center and the total amount
21 of fees collected.

22 (b) A description of each rehabilitation project certified.

23 (c) The location of each new and ongoing rehabilitation
24 project.

25 (D) **THE NUMBER OF MICHIGAN RESIDENTS EMPLOYED IN NEW JOBS IN**
26 **THE IMMEDIATELY PRECEDING YEAR.**

27 (E) **THE TOTAL NUMBER OF NEW JOBS CREATED IN THE IMMEDIATELY**

1 PRECEDING YEAR.

2 (F) THE SPECIFIC REASONS FOR EACH DETERMINATION OF EXEMPTION
3 FROM THE PROVISIONS OF SUBSECTION (4) (A) OR (B) MADE BY THE CENTER
4 AND THE NUMBER OF JOBS RELATED TO EACH DETERMINATION.

5 (18) ~~(16)~~—For purposes of this section, taxpayer includes a
6 person subject to the tax imposed under chapter 2A or 2B.

7 (19) ~~(17)~~—As used in this section:

8 (a) "Contributing resource" means an historic resource that
9 contributes to the significance of the historic district in which
10 it is located.

11 (b) "Historic district" means an area, or group of areas not
12 necessarily having contiguous boundaries, that contains 1 resource
13 or a group of resources that are related by history, architecture,
14 archaeology, engineering, or culture.

15 (c) "Historic resource" means a publicly or privately owned
16 historic building, structure, site, object, feature, or open space
17 located within an historic district designated by the national
18 register of historic places, the state register of historic sites,
19 or a local unit acting under the local historic districts act, 1970
20 PA 169, MCL 399.201 to 399.215, or that is individually listed on
21 the state register of historic sites or national register of
22 historic places, and includes all of the following:

23 (i) An owner-occupied personal residence or a historic resource
24 located within the property boundaries of that personal residence.

25 (ii) An income-producing commercial, industrial, or residential
26 resource or an historic resource located within the property
27 boundaries of that resource.

1 (iii) A resource owned by a governmental body, nonprofit
2 organization, or tax-exempt entity that is used primarily by a
3 taxpayer lessee in a trade or business unrelated to the
4 governmental body, nonprofit organization, or tax-exempt entity and
5 that is subject to tax under this act.

6 (iv) A resource that is occupied or utilized by a governmental
7 body, nonprofit organization, or tax-exempt entity pursuant to a
8 long-term lease or lease with option to buy agreement.

9 (v) Any other resource that could benefit from rehabilitation.

10 (d) "Last tax year" means the taxpayer's tax year under former
11 1975 PA 228 that begins after December 31, 2006 and before January
12 1, 2008.

13 (e) "Local unit" means a county, city, village, or township.

14 (f) "Long-term lease" means a lease term of at least 27.5
15 years for a residential resource or at least 31.5 years for a
16 nonresidential resource.

17 (g) "Michigan historical center" or "center" means the state
18 historic preservation office of the Michigan historical center of
19 the department of history, arts, and libraries or its successor
20 agency.

21 (h) "Open space" means undeveloped land, a naturally
22 landscaped area, or a formal or man-made landscaped area that
23 provides a connective link or a buffer between other resources.

24 (i) "Person" means an individual, partnership, corporation,
25 association, governmental entity, or other legal entity.

26 (j) "Qualified expenditures" means capital expenditures that
27 qualify for a rehabilitation credit under section 47(a)(2) of the

1 internal revenue code if the taxpayer is eligible for the credit
2 under section 47(a)(2) of the internal revenue code or, if the
3 taxpayer is not eligible for the credit under section 47(a)(2) of
4 the internal revenue code, the qualified expenditures that would
5 qualify under section 47(a)(2) of the internal revenue code except
6 that the expenditures are made to an historic resource that is not
7 eligible for the credit under section 47(a)(2) of the internal
8 revenue code that were paid not more than 5 years after the
9 certification of the rehabilitation plan that included those
10 expenditures was approved by the center, and that were paid after
11 December 31, 1998 for the rehabilitation of an historic resource.
12 Qualified expenditures do not include capital expenditures for
13 nonhistoric additions to an historic resource except an addition
14 that is required by state or federal regulations that relate to
15 historic preservation, safety, or accessibility.

16 (k) "Qualified taxpayer" means a person that is an assignee
17 under subsection ~~(7)~~—(9) or either owns the resource to be
18 rehabilitated or has a long-term lease agreement with the owner of
19 the historic resource and that has qualified expenditures for the
20 rehabilitation of the historic resource equal to or greater than
21 10% of the state equalized valuation of the property. If the
22 historic resource to be rehabilitated is a portion of an historic
23 or nonhistoric resource, the state equalized valuation of only that
24 portion of the property shall be used for purposes of this
25 subdivision. If the assessor for the local tax collecting unit in
26 which the historic resource is located determines the state
27 equalized valuation of that portion, that assessor's determination

1 shall be used for purposes of this subdivision. If the assessor
2 does not determine that state equalized valuation of that portion,
3 qualified expenditures, for purposes of this subdivision, shall be
4 equal to or greater than 5% of the appraised value as determined by
5 a certified appraiser. If the historic resource to be rehabilitated
6 does not have a state equalized valuation, qualified expenditures
7 for purposes of this subdivision shall be equal to or greater than
8 5% of the appraised value of the resource as determined by a
9 certified appraiser.

10 (l) "Rehabilitation plan" means a plan for the rehabilitation
11 of an historic resource that meets the federal secretary of the
12 interior's standards for rehabilitation and guidelines for
13 rehabilitation of historic buildings under 36 CFR part 67.

14 Enacting section 1. This amendatory act is retroactive and is
15 effective for taxes levied on and after January 1, 2008.