

HOUSE BILL No. 6044

April 13, 2010, Introduced by Rep. Clemente and referred to the Committee on New Economy and Quality of Life.

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~~ **2014**, up to 20% of
23 the 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~~ 2014, up to 20% of the costs of the qualified taxpayer's
25 eligible investment as determined under subsection (11) paid or
26 accrued by the qualified taxpayer on an eligible property if the
27 project is designated as an urban development area project by the

Michigan economic growth authority. For projects approved, or amended, on and after January 1, 2010, if the total of all eligible investments for a project is more than \$10,000,000.00 but \$100,000,000.00 or less, up to 12.5% of the costs of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property that, except as provided in subsection (6)(b), is located in a qualified local governmental unit, up to 15% of the cost of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority, or, until December 31, ~~2010~~2014, up to 20% of the costs of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority. If eligible investment exceeds the amount of eligible investment in the preapproval letter, as amended, for that project, the total of all credits for the project shall not exceed the total of all credits on the certificate of completion.

(2) If the cost of a project will be \$2,000,000.00 or less, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project under this subsection. An application under this subsection shall state whether the project is a multiphase project. Subject to the limitation provided under 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 (10) A project may be a multiphase project. If a project is a
10 multiphase project, when each component of the multiphase project
11 is completed, the taxpayer shall submit documentation that the
12 component is complete, an accounting of the cost of the component,
13 and the eligible investment for the component of each taxpayer
14 eligible for a credit for the project of which the component is a
15 part to the Michigan economic growth authority or the designee of
16 the Michigan economic growth authority, who shall verify that the
17 component is complete. When the completion of the component is
18 verified, a component completion certificate shall be issued to the
19 qualified taxpayer which shall state that the taxpayer is a
20 qualified taxpayer, the credit amount for the component, the
21 qualified taxpayer's federal employer identification number or the
22 Michigan treasury number assigned to the taxpayer, and the project
23 number. The taxpayer may assign all or part of the credit for a
24 multiphase project as provided in this section after a component
25 completion certificate for a component is issued. The qualified
26 taxpayer may transfer ownership of or lease the completed component
27 and assign a proportionate share of the credit for the entire

1 project to the qualified taxpayer that is the new owner or lessee.
2 A multiphase project shall not be divided into more than 10
3 components. A component is considered to be completed when a
4 certificate of occupancy has been issued by the local municipality
5 in which the project is located for all of the buildings or
6 facilities that comprise the completed component and a component
7 completion certificate is issued or the chairperson of the Michigan
8 economic growth authority or his or her designee, for projects
9 approved under subsection (2) or (3), or the Michigan economic
10 growth authority, for projects approved under subsection (4),
11 verifies that the component is complete. A credit assigned based on
12 a multiphase project shall be claimed by the assignee in the tax
13 year in which the assignment is made. The total of all credits for
14 a multiphase project shall not exceed the amount stated in the
15 preapproval letter, as amended, for the project under subsection
16 (1). If all components of a multiphase project are not completed by
17 10 years after the date on which the preapproval letter, as
18 amended, if applicable, for the project was issued, the qualified
19 taxpayer that received the preapproval letter for the project shall
20 pay to the state treasurer, as a penalty, an amount equal to the
21 sum of all credits claimed and assigned for all components of the
22 multiphase project and no credits based on that multiphase project
23 shall be claimed after that date by the qualified taxpayer or any
24 assignee of the qualified taxpayer. The penalty under this
25 subsection is subject to interest on the amount of the credit
26 claimed or assigned determined individually for each component at
27 the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on

1 the date that the credit for that component was claimed or
2 assigned. As used in this subsection, "proportionate share" means
3 the same percentage of the total of all credits for the project
4 that the qualified investment for the completed component is of the
5 total qualified investment stated in the preapproval letter, as
6 amended, for the entire project.

7 (11) When a project under this section is completed, the
8 taxpayer shall submit documentation that the project is completed,
9 an accounting of the cost of the project, the eligible investment
10 of each taxpayer if there is more than 1 taxpayer eligible for a
11 credit for the project, and, if the taxpayer is not the owner or
12 lessee of the eligible property on which the eligible investment
13 was made at the time the project is completed, that the taxpayer
14 was the owner or lessee of, or was a party to an agreement to
15 purchase or lease, that eligible property when all eligible
16 investment of the taxpayer was made. The chairperson of the
17 Michigan economic growth authority or his or her designee, for
18 projects approved under subsection (2) or (3), or the Michigan
19 economic growth authority, for projects approved under subsection
20 (4), shall verify that the project is completed. The Michigan
21 economic growth authority shall conduct an on-site inspection as
22 part of the verification process for projects approved under
23 subsection (4). When the completion of the project is verified, a
24 certificate of completion shall be issued to each qualified
25 taxpayer that has made eligible investment on that eligible
26 property. The certificate of completion shall state the total
27 amount of all credits for the project and that total shall not

1 exceed the maximum total of all credits listed in the preapproval
2 letter for the project under subsection (2), (3), or (4) as
3 applicable and as amended under subsection (9) and shall state all
4 of the following:

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

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

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

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

11 (e) The project number.

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

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

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

27 (13) The cost of eligible investment for leased machinery,

1 equipment, or fixtures is the cost of that property had the
2 property been purchased minus the lessor's estimate, made at the
3 time the lease is entered into, of the market value the property
4 will have at the end of the lease. A credit for property described
5 in this subsection is allowed only if the cost of that property had
6 the property been purchased and the lessor's estimate of the market
7 value at the end of the lease are provided to the Michigan economic
8 growth authority.

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

11 (15) Each qualified taxpayer and assignee under subsection
12 (20), (21), or (22) that claims a credit under this section shall
13 attach a copy of the certificate of completion and, if the credit
14 was assigned, a copy of the assignment form provided for under this
15 section to the annual return filed under this act on which the
16 credit under this section is claimed. An assignee of a credit based
17 on a multiphase project shall attach a copy of the assignment form
18 provided for under this section and the component completion
19 certificate provided for in subsection (10) to the annual return
20 filed under this act on which the credit is claimed but is not
21 required to file a copy of a certificate of completion.

22 (16) Except as otherwise provided in this subsection or
23 subsection (10), (18), (20), (21), or (22), a credit under this
24 section shall be claimed in the tax year in which the certificate
25 of completion is issued to the qualified taxpayer. For a project
26 described in subsection (11)(f) for which a schedule for claiming
27 annual credit amounts is designated on the certificate of

1 completion by the Michigan economic growth authority, the annual
2 credit amount shall be claimed in the tax year specified on the
3 certificate of completion.

4 (17) Except as otherwise provided under this subsection, the
5 credits approved under this section shall be calculated after
6 application of all other credits allowed under this act. The
7 credits under this section shall be calculated before the
8 calculation of the credits under sections 413, 423, 431, and 450.

9 (18) Except as otherwise provided under this subsection, if
10 the credit allowed under this section for the tax year and any
11 unused carryforward of the credit allowed under this section exceed
12 the qualified taxpayer's or assignee's tax liability for the tax
13 year, that portion that exceeds the tax liability for the tax year
14 shall not be refunded but may be carried forward to offset tax
15 liability in subsequent tax years for 10 years or until used up,
16 whichever occurs first. Except as otherwise provided in this
17 subsection, the maximum time allowed under the carryforward
18 provisions under this subsection begins with the tax year in which
19 the certificate of completion is issued to the qualified taxpayer.
20 If the qualified taxpayer assigns all or any portion of its credit
21 approved under this section, the maximum time allowed under the
22 carryforward provisions for an assignee begins to run with the tax
23 year in which the assignment is made and the assignee first claims
24 a credit, which shall be the same tax year. The maximum time
25 allowed under the carryforward provisions for an annual credit
26 amount for a credit allowed under subsection (4) begins to run in
27 the tax year for which the annual credit amount is designated on

1 the certificate of completion issued under this section. A credit
2 carryforward available under section 38g of former 1975 PA 228 that
3 is unused at the end of the last tax year may be claimed against
4 the tax imposed under this act for the years the carryforward would
5 have been available under former 1975 PA 228. Beginning on and
6 after April 8, 2008, if the credit allowed under this section for
7 the tax year exceeds the qualified taxpayer's tax liability for the
8 tax year, the qualified taxpayer may elect to have the excess
9 refunded at a rate equal to 85% of that portion of the credit that
10 exceeds the tax liability of the qualified taxpayer for the tax
11 year and forgo the remaining 15% of the credit and any
12 carryforward.

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

1 qualified taxpayer's carryforward under subsection (18).

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

1 the taxpayer shall claim the credit in the year in which the credit
2 is assigned. If a qualified taxpayer assigns all or a portion of
3 the credit and the eligible property is leased to more than 1
4 taxpayer, the qualified taxpayer shall determine the amount of
5 credit assigned to each lessee. A lessee shall not subsequently
6 assign a credit or any portion of a credit assigned under this
7 subsection. A purchaser may subsequently assign a credit or any
8 portion of a credit assigned to the purchaser under this subsection
9 to a lessee of the eligible property. The credit assignment under
10 this subsection shall be made on a form prescribed by the Michigan
11 economic growth authority. The qualified taxpayer shall send a copy
12 of the completed assignment form to the Michigan economic growth
13 authority in the tax year in which the assignment is made. The
14 assignee shall attach a copy of the completed assignment form to
15 its annual return required to be filed under this act, for the tax
16 year in which the assignment is made and the assignee first claims
17 a credit, which shall be the same tax year. In addition to all
18 other procedures under this subsection, the following apply if the
19 total of all credits for a project is more than \$10,000,000.00 but
20 \$30,000,000.00 or less:

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

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

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

1 each annual credit amount to any assignee.

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

4 (21) Except as otherwise provided in this subsection, for
5 projects for which a certificate of completion is issued before
6 January 1, 2006, and except as otherwise provided in this
7 subsection, if a qualified taxpayer is a partnership, limited
8 liability company, or subchapter S corporation, the qualified
9 taxpayer may assign all or a portion of a credit under this section
10 to its partners, members, or shareholders, based on their
11 proportionate share of ownership of the partnership, limited
12 liability company, or subchapter S corporation or based on an
13 alternative method approved by the Michigan economic growth
14 authority. A credit assignment under this subsection is irrevocable
15 and, except for a credit assignment based on a multiphase project,
16 shall be made in the tax year in which a certificate of completion
17 is issued. A qualified taxpayer may claim a portion of a credit and
18 assign the remaining credit amount. Except as otherwise provided in
19 this subsection, if the qualified taxpayer both claims and assigns
20 portions of the credit, the qualified taxpayer shall claim the
21 portion it claims in the tax year in which a certificate of
22 completion is issued or for a credit assigned and claimed for a
23 multiphase project, before the component completion certificate is
24 issued, the taxpayer shall claim the credit in the year in which
25 the credit is assigned. A partner, member, or shareholder that is
26 an assignee shall not subsequently assign a credit or any portion
27 of a credit assigned under this subsection. The credit assignment

1 under this subsection shall be made on a form prescribed by the
2 Michigan economic growth authority. The qualified taxpayer shall
3 send a copy of the completed assignment form to the Michigan
4 economic growth authority in the tax year in which the assignment
5 is made. A partner, member, or shareholder who is an assignee shall
6 attach a copy of the completed assignment form to its annual return
7 required under this act, for the tax year in which the assignment
8 is made and the assignee first claims a credit, which shall be the
9 same tax year. A credit assignment based on a credit for a
10 component of a multiphase project that is completed before January
11 1, 2006 shall be made under this subsection. In addition to all
12 other procedures under this subsection, the following apply if the
13 total of all credits for a project is more than \$10,000,000.00 but
14 \$30,000,000.00 or less:

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

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

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

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

25 (22) For projects approved under this section or section 38g
26 of former 1975 PA 228 for which a certificate of completion is
27 issued on and after January 1, 2006, a qualified taxpayer may

1 assign all or a portion of a credit allowed under this section or
2 section 38g(2), (3), or (33) of former 1975 PA 228 under this
3 subsection. A credit assignment under this subsection is
4 irrevocable and, except for a credit assignment based on a
5 multiphase project, shall be made in the tax year in which a
6 certificate of completion is issued unless the assignee is an
7 unknown lessee. If a qualified taxpayer wishes to assign all or a
8 portion of its credit to a lessee but the lessee is unknown in the
9 tax year in which the certificate of completion is issued, the
10 qualified taxpayer may delay claiming and assigning the credit
11 until the first tax year in which the lessee is known. A qualified
12 taxpayer may claim a portion of a credit and assign the remaining
13 credit amount. 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 a certificate of
16 completion is issued pursuant to this section or section 38g of
17 former 1975 PA 228. An assignee may subsequently assign a credit or
18 any portion of a credit assigned under this subsection to 1 or more
19 assignees. The credit assignment or a subsequent reassignment under
20 this subsection shall be made on a form prescribed by the Michigan
21 economic growth authority. The Michigan economic growth authority
22 or its designee shall review and issue a completed assignment or
23 reassignment certificate to the assignee or reassignee. An assignee
24 or subsequent reassignee shall attach a copy of the completed
25 assignment certificate to its annual return required under this
26 act, for the tax year in which the assignment or reassignment is
27 made and the assignee or reassignee first claims a credit, which

1 shall be the same tax year. A credit assignment based on a credit
2 for a component of a multiphase project that is completed before
3 January 1, 2006 shall be made under section 38g(18) of former 1975
4 PA 228. A credit assignment based on a credit for a component of a
5 multiphase project that is completed on or after January 1, 2006
6 may be made under this section. In addition to all other procedures
7 and requirements under this section, the following apply if the
8 total of all credits for a project is more than \$10,000,000.00 but
9 \$30,000,000.00 or less:

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

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

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

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

22 (24) When reviewing an application for a project for
23 designation as an urban development area project, the Michigan
24 economic growth authority for projects approved under subsection
25 (4) or the chairperson of the Michigan economic growth authority or
26 his or her designee for projects approved under subsections (2) and
27 (3) shall consider all of the following criteria:

1 (a) If the project increases the density of the area by
2 promoting multistory development.

3 (b) If the project promotes mixed-use development and walkable
4 communities.

5 (c) If the project promotes sustainable redevelopment.

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

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

9 (f) Any other criteria determined by the Michigan economic
10 growth authority or the chairperson of the Michigan economic growth
11 authority.

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

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

26 (27) Eligible investment attributable or related to the
27 operation of a casino, and eligible investment that is associated

1 or affiliated with the operation of a casino, including, but not
 2 limited to, the operation of a parking lot, hotel, motel, or retail
 3 store, shall not be used as a basis for a credit under this
 4 section. As used in this subsection, "casino" means a casino
 5 regulated by this state pursuant to the Michigan gaming control and
 6 revenue act, 1996 IL 1, MCL 432.201 to 432.226.

7 (28) Eligible investment attributable or related to the
 8 construction of a new landfill or the expansion of an existing
 9 landfill regulated under part 115 of the natural resources and
 10 environmental protection act, 1994 PA 451, MCL 324.11501 to
 11 324.11550, shall not be used as a basis for a credit under this
 12 section.

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

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

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

23 (30) For purposes of this section, taxpayer includes a person
 24 subject to the tax imposed under ~~chapters~~ **CHAPTER 2A** and **A PERSON**
 25 **SUBJECT TO THE TAX UNDER CHAPTER 2B.**

26 (31) For the 2008 calendar year, the total of all credits for
 27 all projects approved under subsection (2) or (3) shall not exceed

1 \$63,000,000.00. For each calendar year after 2008, the total of all
2 credits for all projects approved under subsection (2) or (3) shall
3 not exceed \$40,000,000.00. If the Michigan economic growth
4 authority approves a total of all credits for all projects under
5 subsection (2) or (3) of less than \$40,000,000.00 in a calendar
6 year, the Michigan economic growth authority may carry forward for
7 1 year only the difference between \$40,000,000.00 and the total of
8 all credits for all projects under this subsection approved in the
9 immediately preceding calendar year.

10 (32) As used in this section:

11 (a) "Annual credit amount" means the maximum amount that a
12 qualified taxpayer is eligible to claim each tax year for a project
13 for which the total of all credits is more than \$10,000,000.00 but
14 \$30,000,000.00 or less, as approved under subsection (4).

15 (b) "Authority" means a brownfield redevelopment authority
16 created under the brownfield redevelopment financing act, 1996 PA
17 381, MCL 125.2651 to 125.2672.

18 (c) "Blighted", "brownfield plan", "eligible activities",
19 "facility", "functionally obsolete", "qualified local governmental
20 unit", and "response activity" mean those terms as defined in the
21 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
22 to 125.2672.

23 (d) "Eligible investment" or "eligible investments" means,
24 when made after the approval date of the brownfield plan but in any
25 event no earlier than 90 days prior to the date of the preapproval
26 letter, any demolition, construction, restoration, alteration,
27 renovation, or improvement of buildings or site improvements on

1 eligible property and the addition of machinery, equipment, and
2 fixtures to eligible property after the date that eligible
3 activities on that eligible property have started pursuant to a
4 brownfield plan under the brownfield redevelopment financing act,
5 1996 PA 381, MCL 125.2651 to 125.2672, if the costs of the eligible
6 investment are not otherwise reimbursed to the taxpayer or paid for
7 on behalf of the taxpayer from any source other than the taxpayer.

8 The addition of leased machinery, equipment, or fixtures to
9 eligible property by a lessee of the machinery, equipment, or
10 fixtures is eligible investment if the lease of the machinery,
11 equipment, or fixtures has a minimum term of 10 years or is for the
12 expected useful life of the machinery, equipment, or fixtures, and
13 if the owner of the machinery, equipment, or fixtures is not the
14 qualified taxpayer with regard to that machinery, equipment, or
15 fixtures. For projects approved after April 8, 2008, eligible
16 investment does not include certain soft costs of the eligible
17 investment as determined by the Michigan economic growth authority,
18 including, but not limited to, developer fees, appraisals,
19 performance bonds, closing costs, bank fees, loan fees, risk
20 contingencies, financing costs, permanent or construction period
21 interest, legal expenses, leasing or sales commissions, marketing
22 costs, professional fees, shared savings, taxes, title insurance,
23 bank inspection fees, insurance, and project management fees.

24 Notwithstanding the foregoing, eligible investment does include
25 architectural, engineering, surveying, and similar professional
26 fees.

27 (e) "Eligible property", except as otherwise provided under

1 subsection (33), means property for which eligible activities are
2 identified under a brownfield plan that was used or is currently
3 used for commercial, industrial, public, or residential purposes,
4 including personal property located on the property, to the extent
5 included in the brownfield plan, and that is 1 or more of the
6 following:

7 (i) Is in a qualified local governmental unit and is a
8 facility, functionally obsolete, or blighted and includes parcels
9 that are adjacent or contiguous to that property if the development
10 of the adjacent and contiguous parcels is estimated to increase the
11 captured taxable value of that property.

12 (ii) Is not in a qualified local governmental unit and is a
13 facility, and includes parcels that are adjacent or contiguous to
14 that property if the development of the adjacent and contiguous
15 parcels is estimated to increase the captured taxable value of that
16 property.

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

19 (f) "Last tax year" means the taxpayer's tax year under former
20 1975 PA 228 that begins after December 31, 2006 and before January
21 1, 2008.

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

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

1 (i) "Personal property" means that term as defined in section
2 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
3 that personal property does not include either of the following:

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

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

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

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

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

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

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

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

22 (ii) Certifies that, except as otherwise provided in this
23 subparagraph, the department of natural resources and environment
24 has not sued or issued a unilateral order to the taxpayer pursuant
25 to part 201 of the natural resources and environmental protection
26 act, 1994 PA 451, MCL 324.20101 to 324.20142, to compel response
27 activity on or to the eligible property, or expended any state

1 funds for response activity on or to the eligible property and
2 demanded reimbursement for those expenditures from the qualified
3 taxpayer. However, if the taxpayer has completed all response
4 activity required by part 201 of the natural resources and
5 environmental protection act, 1994 PA 451, MCL 324.20101 to
6 324.20142, is in compliance with any deed restriction or
7 administrative or judicial order related to the required response
8 activity, and has reimbursed the state for all costs incurred by
9 the state related to the required response activity, the taxpayer
10 meets the criteria under this subparagraph.

11 (m) "Urban development area project" means a project located
12 on eligible property in the downtown or traditional central
13 business district of a qualified local governmental unit or county
14 seat or along a traditional commercial corridor of a qualified
15 local governmental unit or county seat as determined by the
16 Michigan economic growth authority or the chairperson of the
17 Michigan economic growth authority or his or her designee.

18 (33) For purposes of subsection (2), eligible property means
19 that term as defined under subsection (32)(e) except that all of
20 the following apply:

21 (a) Eligible property means property identified under a
22 brownfield plan that was used or is currently used for commercial,
23 industrial, public, or residential purposes and that is 1 of the
24 following:

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

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

6 (A) Infrastructure improvements that directly benefit the
7 eligible property.

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

11 (C) Lead or asbestos abatement.

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

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

18 (b) Eligible property includes parcels that are adjacent or
19 contiguous to the eligible property if the development of the
20 adjacent or contiguous parcels is estimated to increase the
21 captured taxable value of the property or tax reverted property
22 owned or under the control of a land bank fast track authority
23 pursuant to the land bank fast track act, 2003 PA 258, MCL 124.751
24 to 124.774.

25 (c) Eligible property includes, to the extent included in the
26 brownfield plan, personal property located on the eligible
27 property.

1 (d) Eligible property does not include qualified agricultural
2 property exempt under section 7ee of the general property tax act,
3 1893 PA 206, MCL 211.7ee, from the tax levied by a local school
4 district for school operating purposes to the extent provided under
5 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.