

**SUBSTITUTE FOR
SENATE BILL NO. 94**

A bill to provide for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER 1

2

Sec. 1. This act shall be known and may be cited as the

3

"business and economic stimulus tax act".

1 Sec. 2. A term used in this act and not defined differently
2 shall have the same meaning as when used in comparable context in
3 the laws of the United States relating to federal income taxes in
4 effect for the tax year unless a different meaning is clearly
5 required. A reference in this act to the internal revenue code
6 includes other provisions of the laws of the United States relating
7 to federal income taxes.

8 Sec. 3. (1) "Affiliated group" means 2 or more United States
9 corporations, 1 of which owns or controls, directly or indirectly,
10 80% or more of the capital stock or other ownership interest with
11 voting rights of the other United States corporation or United
12 States corporations. As used in this subsection, "United States
13 corporation" means a domestic corporation as that term is defined
14 in section 7701(a) (3) and (4) of the internal revenue code.

15 (2) "Business activity" means a transfer of legal or equitable
16 title to or rental of property, whether real, personal, or mixed,
17 tangible or intangible, or the performance of services, or a
18 combination thereof, made or engaged in, or caused to be made or
19 engaged in, within this state, whether in intrastate, interstate,
20 or foreign commerce, with the object of gain, benefit, or
21 advantage, whether direct or indirect, to the taxpayer or to
22 others, but does not include the services rendered by an employee
23 to his or her employer, services as a director of a corporation, or
24 a casual transaction. Although an activity of a taxpayer may be
25 incidental to another or others of his or her business activities,
26 each activity shall be considered to be business engaged in within
27 the meaning of this act.

1 (3) "Business income" means that part of federal taxable
2 income derived from business activity. For a partnership or
3 subchapter S corporation, business income includes payments and
4 items of income and expense that are attributable to business
5 activity of the partnership or subchapter S corporation and
6 separately reported to the partners or shareholders.

7 Sec. 4. (1) "Casual transaction" means a transaction made or
8 engaged in other than in the ordinary course of repeated and
9 successive transactions of a like character, except that a
10 transaction made or engaged in by a person that is incidental to
11 that person's regular business activity is a business activity
12 within the meaning of this act.

13 (2) "Compensation" means all wages, salaries, fees, bonuses,
14 commissions, or other payments made in the tax year on behalf of or
15 for the benefit of employees, officers, or directors of the
16 taxpayers. Compensation includes, but is not limited to, payments
17 that are subject to or specifically exempt or excepted from
18 withholding under sections 3401 to 3406 of the internal revenue
19 code. Compensation also includes, on a cash or accrual basis
20 consistent with the taxpayer's method of accounting for federal
21 income tax purposes, payments to individuals not currently working,
22 payments to dependents and heirs of individuals based on current or
23 previous labor services rendered by those individuals, payments to
24 a pension, retirement, or profit sharing plan, and payments for
25 insurance for which employees are the beneficiaries, including
26 payments under health and welfare and noninsured benefit plans and
27 payment of fees for the administration of health and welfare and

1 noninsured benefit plans. Compensation does not include any of the
2 following:

3 (a) Discounts on the price of the taxpayer's merchandise or
4 services sold to the taxpayer's employees, officers, or directors
5 that are not available to other customers.

6 (b) Payments to an independent contractor.

7 (c) Payments to state and federal unemployment compensation
8 funds.

9 (d) The employer's portion of payments under the federal
10 insurance contributions act, chapter 21 of subtitle C of the
11 internal revenue code, 26 USC 3101 to 3128, the railroad retirement
12 tax act, chapter 22 of subtitle C of the internal revenue code, 26
13 USC 3201 to 3241, and similar social insurance programs.

14 (e) Payments, including self-insurance payments, for worker's
15 compensation insurance or federal employers' liability act
16 insurance pursuant to 45 USC 51 to 60.

17 (f) Payments under health and welfare and noninsured benefit
18 plans for the benefit of persons who are residents of this state
19 and payments of fees for the administration of health and welfare
20 and noninsured benefit plans for the benefit of persons who are
21 residents of this state.

22 (3) "Corporation" means a person that is a corporation under
23 the internal revenue code.

24 (4) "Department" means the department of treasury.

25 (5) "Detroit consumer price index" means the most
26 comprehensive index of consumer prices available for the Detroit
27 area from the United States department of labor, bureau of labor

1 statistics.

2 Sec. 5. (1) "Employee" means an employee as defined in section
3 3401(c) of the internal revenue code. A person from whom an
4 employer is required to withhold for federal income tax purposes is
5 prima facie considered an employee.

6 (2) "Employer" means an employer as defined in section 3401(d)
7 of the internal revenue code. A person required to withhold for
8 federal income tax purposes is prima facie considered an employer.

9 (3) "Federal taxable income" means taxable income as defined
10 in section 63 of the internal revenue code.

11 (4) "Financial organization" means any association, joint
12 stock company, or corporation, other than a depository financial
13 institution as defined under chapter 6, at least 90% of whose
14 assets consist of intangible personal property and at least 90% of
15 whose gross receipts consist of dividends or interest or other
16 charges resulting from the use of money or credit.

17 (5) "Foreign person" means either of the following:

18 (a) An individual who is not a United States resident, whether
19 or not the individual is subject to taxation under the internal
20 revenue code.

21 (b) A person formed under the laws of a foreign country or a
22 political subdivision of a foreign country, whether or not the
23 person is subject to taxation under the internal revenue code.

24 Sec. 6. (1) "Gross receipts" means the entire amount received
25 by the taxpayer from any activity whether in intrastate,
26 interstate, or foreign commerce carried on for direct or indirect
27 gain, benefit, or advantage to the taxpayer or to others except for

1 the following:

2 (a) Proceeds from sales by a principal that the taxpayer
3 collects in an agency capacity solely on behalf of the principal
4 and delivers to the principal.

5 (b) Amounts received by the taxpayer as an agent solely on
6 behalf of the principal that are expended by the taxpayer for any
7 of the following:

8 (i) The performance of a service by a third party for the
9 benefit of the principal that is required by law to be performed by
10 a licensed person.

11 (ii) The performance of a service by a third party for the
12 benefit of the principal that the taxpayer has not undertaken a
13 contractual duty to perform.

14 (iii) Principal and interest under a mortgage loan or land
15 contract, lease or rental payments, or taxes, utilities, or
16 insurance premiums relating to real or personal property owned or
17 leased by the principal.

18 (iv) A capital asset of a type that is, or under the internal
19 revenue code will become, eligible for depreciation, amortization,
20 or accelerated cost recovery by the principal for federal income
21 tax purposes, or for real property owned or leased by the
22 principal.

23 (v) Property not described under subparagraph (iv) that is
24 purchased by the taxpayer on behalf of the principal and that the
25 taxpayer does not take title to or use in the course of performing
26 its contractual business activities.

27 (vi) Fees, taxes, assessments, levies, fines, penalties, or

1 other payments established by law that are paid to a governmental
2 entity and that are the legal obligation of the principal.

3 (c) Amounts that are excluded from gross income of a foreign
4 corporation engaged in the international operation of aircraft
5 under section 883(a) of the internal revenue code.

6 (d) Amounts received by an advertising agency used to acquire
7 advertising media time, space, production, or talent on behalf of
8 another person.

9 (e) Notwithstanding any other provision of this section,
10 amounts received by a taxpayer that manages real property owned by
11 the taxpayer's client that are deposited into a separate account
12 kept in the name of the taxpayer's client and that are not
13 reimbursements to the taxpayer and are not indirect payments for
14 management services that the taxpayer provides to that client.

15 (f) Proceeds from the taxpayer's transfer of an account
16 receivable if the sale that generated the account receivable was
17 included in gross receipts for federal income tax purposes. This
18 subdivision does not apply to a taxpayer that during the tax year
19 both buys and sells any receivables.

20 (g) Proceeds from any of the following:

21 (i) The original issue of stock or equity instruments.

22 (ii) The original issue of debt instruments.

23 (h) Refunds from returned merchandise.

24 (i) Cash and in-kind discounts.

25 (j) Trade discounts.

26 (k) Federal, state, or local tax refunds.

27 (l) Security deposits.

1 (m) Payment of the principal portion of loans.

2 (n) Value of property received in a like-kind exchange.

3 (o) Proceeds from a sale, transaction, exchange, involuntary
4 conversion, or other disposition of tangible, intangible, or real
5 property that is a capital asset as defined in section 1221(a) of
6 the internal revenue code or land that qualifies as property used
7 in the trade or business as defined in section 1231(b) of the
8 internal revenue code, less any gain from the disposition to the
9 extent that gain is included in federal taxable income.

10 (p) The proceeds from a policy of insurance, a settlement of a
11 claim, or a judgment in a civil action less any proceeds under this
12 subdivision that are included in federal taxable income.

13 (q) Compensation received by a taxpayer that is a staffing
14 company for personnel leased by that staffing company. As used in
15 this subdivision:

16 (i) "Compensation" includes all payroll tax and worker's
17 compensation costs.

18 (ii) "Staffing company" means a taxpayer whose business
19 activities are included in industry group 736 under the standard
20 industrial classification code as compiled by the United States
21 department of labor.

22 (2) "Insurance company" means an authorized insurer as defined
23 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
24 500.106.

25 (3) "Internal revenue code" means the United States internal
26 revenue code of 1986 in effect on January 1, 2008 or, at the option
27 of the taxpayer, in effect for the tax year.

1 (4) "Inventory" means, except as provided in subdivision (d),
2 all of the following:

3 (a) The stock of goods held for resale in the regular course
4 of trade of a retail or wholesale business, including electricity
5 or natural gas purchased for resale.

6 (b) Finished goods, goods in process, and raw materials of a
7 manufacturing business.

8 (c) Materials and supplies, including repair parts and fuel.

9 (d) Inventory does not include either of the following:

10 (i) Personal property under lease or principally intended for
11 lease rather than sale.

12 (ii) Property allowed a deduction or allowance for depreciation
13 or depletion under the internal revenue code.

14 (5) "Nonbusiness income" means all income from casual
15 transactions and all income other than business income.

16 (6) "Officer" means an officer of a corporation other than a
17 subchapter S corporation, including all of the following:

18 (a) The chairperson of the board.

19 (b) The president, vice president, secretary, or treasurer of
20 the corporation or board.

21 (c) Persons performing similar duties to persons described in
22 subdivisions (a) and (b).

23 Sec. 7. (1) "Partner" means a partner or member of a
24 partnership.

25 (2) "Partnership" means a person that is a partnership for
26 federal income tax purposes.

27 (3) "Person" means an individual, firm, bank, financial

1 organization, depository financial institution, limited
2 partnership, limited liability partnership, copartnership,
3 partnership, joint venture, association, corporation, subchapter S
4 corporation, limited liability company, receiver, estate, trust, or
5 any other group or combination of groups acting as a unit.

6 (4) "Purchases from other firms" means all of the following:

7 (a) Inventory acquired during the tax year.

8 (b) Assets acquired during the tax year of a type that are, or
9 under the internal revenue code will become, eligible for
10 depreciation, amortization, or accelerated capital cost recovery for
11 federal income tax purposes.

12 (5) "Rent" includes a lease payment or other payment for the
13 use of any property to which the taxpayer does not have legal or
14 equitable title.

15 (6) "Revenue mile" means the transportation for a
16 consideration of 1 net ton in weight or 1 passenger the distance of
17 1 mile.

18 Sec. 8. (1) "Sale" or "sales" means the amounts received by
19 the taxpayer as consideration from the following:

20 (a) The transfer of title to, or possession of, property that
21 is stock in trade or other property of a kind that would properly
22 be included in the inventory of the taxpayer if on hand at the
23 close of the tax period or property held by the taxpayer primarily
24 for sale to customers in the ordinary course of the taxpayer's
25 trade or business.

26 (b) The performance of services that constitute business
27 activities other than those included in subdivision (a), or any

1 combination of business activities described in this subdivision
2 and subdivision (a).

3 (c) The rental, lease, licensing, or use of tangible or
4 intangible property that constitutes business activity.

5 (d) Sale or sales do not include dividends, interest, and
6 royalties except to the extent earned in the ordinary course of
7 business activity.

8 (2) "State" means any state of the United States, the District
9 of Columbia, the Commonwealth of Puerto Rico, any territory or
10 possession of the United States, and any foreign country, or a
11 political subdivision of any of the foregoing.

12 (3) "Subchapter S corporation" means a corporation electing
13 taxation under subchapter S or chapter 1 of subtitle A of the
14 internal revenue code, sections 1361 to 1379 of the internal
15 revenue code.

16 Sec. 9. (1) "Tax" means the tax imposed under this act,
17 including interest and penalties under this act, unless the term is
18 given a more limited meaning in the context of this act or a
19 provision of this act.

20 (2) Except as otherwise provided under this act, "tax base"
21 means the taxpayer's gross receipts less purchases from other firms
22 before apportionment under this act. For a foreign person, tax base
23 is determined under section 12. For a financial organization, tax
24 base means the taxpayer's gross receipts less any cost of funds or
25 interest expenses. For an insurance company, tax base is determined
26 under chapter 5. For a depository financial institution, tax base
27 is determined under chapter 6.

1 \$1,560,000,000.00 adjusted annually by an amount equal to the
2 growth in the Detroit consumer price index for the immediately
3 preceding fiscal year plus 1%, then the rate established under this
4 section shall be reduced to a rate for the current tax year
5 determined by the department, in cooperation with the house and
6 senate fiscal agencies, to produce, in conjunction with the rate
7 applied under the business income tax act, an amount equal to
8 \$1,560,000,000.00 adjusted annually by an amount equal to the
9 estimated growth in the Detroit consumer price index for the
10 current fiscal year as determined by the department, in cooperation
11 with the house and senate fiscal agencies, plus 1%.

12 Sec. 11. (1) The following are exempt from the tax imposed by
13 this act:

14 (a) The United States, this state, other states, and the
15 agencies, political subdivisions, and enterprises of the United
16 States, this state, and other states.

17 (b) A person who is exempt from federal income tax under the
18 internal revenue code, and a partnership, limited liability
19 company, joint venture, general partnership, limited partnership,
20 unincorporated association, or other group or combination of
21 entities acting as a unit if the activities of the entity are
22 exclusively related to the charitable, educational, or other
23 purpose or function that is the basis for the exemption under the
24 internal revenue code from federal income taxation of the partners
25 or members and if all of the partners or members of the entity are
26 exempt from federal income tax under the internal revenue code,
27 except the following:

1 (i) An organization included under section 501(c)(12) or
2 501(c)(16) of the internal revenue code.

3 (ii) An organization exempt under section 501(c)(4) of the
4 internal revenue code that would be exempt under section 501(c)(12)
5 of the internal revenue code except that it failed to meet the
6 requirements in section 501(c)(12) that 85% or more of its income
7 consist of amounts collected from members.

8 (iii) The adjusted tax base attributable to the activities
9 giving rise to the unrelated taxable business income of an exempt
10 person.

11 (c) A nonprofit cooperative housing corporation. As used in
12 this subdivision, "nonprofit cooperative housing corporation" means
13 a cooperative housing corporation that is engaged in providing
14 housing services to its stockholders and members and that does not
15 pay dividends or interest on stock or membership investment but
16 that does distribute all earnings to its stockholders or members.
17 The exemption under this subdivision does not apply to a business
18 activity of a nonprofit cooperative housing corporation other than
19 providing housing services to its stockholders and members.

20 (d) That portion of the tax base attributable to the
21 production of agricultural goods by a person whose primary activity
22 is the production of agricultural goods. "Production of
23 agricultural goods" means commercial farming, including, but not
24 limited to, cultivation of the soil; growing and harvesting of an
25 agricultural, horticultural, or floricultural commodity; dairying;
26 raising of livestock, bees, fish, fur-bearing animals, or poultry;
27 or turf or tree farming, but does not include the marketing at

1 retail of agricultural goods except for sales of nursery stock
2 grown by the seller and sold to a nursery dealer licensed under
3 section 9 of the insect pest and plant disease act, 1931 PA 189,
4 MCL 286.209.

5 (e) Except as provided in subsection (2), a farmers'
6 cooperative corporation organized within the limitations of section
7 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under
8 subdivision (b) because the corporation was exempt from federal
9 income taxes under section 521 of the internal revenue code and
10 that would continue to be exempt under section 521 of the internal
11 revenue code except for either of the following activities:

12 (i) The corporation's repurchase from nonproducer customers of
13 portions or components of commodities the corporation markets to
14 those nonproducer customers and the corporation's subsequent
15 manufacturing or marketing of the repurchased portions or
16 components of the commodities.

17 (ii) The corporation's incidental or emergency purchases of
18 commodities from nonproducers to facilitate the manufacturing or
19 marketing of commodities purchased from producers.

20 (f) That portion of the tax base attributable to the direct
21 and indirect marketing activities of a farmers' cooperative
22 corporation organized within the limitations of section 98 of 1931
23 PA 327, MCL 450.98, if those marketing activities are provided on
24 behalf of the members of that corporation and are related to the
25 members' direct sales of their products to third parties or, for
26 livestock, are related to the members' direct or indirect sales of
27 that product to third parties. Marketing activities for a product

1 that is not livestock are not exempt under this subdivision if the
2 farmers' cooperative corporation takes physical possession of the
3 product. As used in this subdivision, "marketing activities" means
4 activities that include, but are not limited to, all of the
5 following:

6 (i) Activities under the agricultural commodities marketing
7 act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural
8 marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726.

9 (ii) Dissemination of market information.

10 (iii) Establishment of price and other terms of trade.

11 (iv) Promotion.

12 (v) Research relating to members' products.

13 (g) That portion of the tax base attributable to the services
14 provided by an attorney-in-fact to a reciprocal insurer pursuant to
15 chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200
16 to 500.7234.

17 (h) That portion of the tax base attributable to a multiple
18 employer welfare arrangement that provides dental benefits only and
19 that has a certificate of authority under chapter 70 of the
20 insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

21 (2) Subsection (1)(e) does not exempt a farmers' cooperative
22 corporation if the total dollar value of the farmers' cooperative
23 corporation's incidental and emergency purchases described in
24 subsection (1)(e)(ii) are equal to or greater than 5% of the
25 corporation's total purchases.

26 (3) Except as otherwise provided in this section, a farmers'
27 cooperative corporation that is structured to allocate net earnings

1 in the form of patronage dividends as defined in section 1388 of
2 the internal revenue code to its farmer or farmer cooperative
3 corporation patrons shall exclude from its adjusted tax base the
4 revenue and expenses attributable to business transacted with its
5 farmer or farmer cooperative corporation patrons.

6 (4) As used in subsection (1)(b), "exclusively" means that
7 term as applied for purposes of section 501(c)(3) of the internal
8 revenue code.

9 Sec. 12. (1) A foreign person shall calculate tax base under
10 this section and, except as otherwise provided in this section, the
11 tax base of a foreign person is subject to all adjustments and
12 other provisions of this act.

13 (2) Except as otherwise provided in this section, except for a
14 taxpayer that pays the tax imposed under chapter 5 or 6, the tax
15 base of a foreign person includes the taxpayer's gross receipts
16 that are related to United States business activity less purchases
17 from other firms, whether or not the foreign person is subject to
18 taxation under the internal revenue code.

19 (3) Compensation of a foreign person is total compensation
20 paid to employees, officers, and directors of the foreign person
21 for services performed in the United States.

22 (4) Notwithstanding the provisions of subsection (3), a
23 foreign person that does not have a permanent establishment in the
24 United States and whose business activity consists of the
25 transportation of persons or property for others by motor vehicle
26 may elect for purposes of this section to calculate compensation
27 related to United States business activity by 1 of the following

1 methods:

2 (a) Calculate compensation under subsection (3) and reduce the
3 final calculation by 50%.

4 (b) Calculate compensation by determining total compensation
5 everywhere, apportioned to the United States by a formula, the
6 numerator of which is revenue miles traveled in the United States
7 and the denominator of which is revenue miles traveled everywhere.

8 (5) To calculate gross receipts that are related to United
9 States business activity, a foreign person that does not have a
10 permanent establishment in the United States during the tax year or
11 that is not subject to taxation under the internal revenue code for
12 the tax year may use amounts that reasonably approximate the gross
13 receipts the person would have had had the person been subject to
14 the internal revenue code, provided the foreign person does not in
15 the ordinary course of its business maintain tax or financial
16 accounting records in accordance with the tax accounting
17 requirements of the internal revenue code. The tax base of a
18 foreign person described in this subsection shall not include gross
19 receipts from sales shipped or delivered to any purchaser within
20 the United States and for which title transfers outside the United
21 States.

22 (6) To calculate gross receipts that are related to United
23 States business activity, a Canadian person that is subject to
24 Canadian federal income tax under the income tax act (R.S.C. 1985,
25 c. 1 (5th Supp)) may use amounts properly calculated under the
26 income tax act (R.S.C. 1985, c. 1 (5th Supp)) to reasonably
27 approximate gross receipts. Amounts calculated under this

1 subsection are presumed to reasonably approximate gross receipts
2 that are related to United States business activity. The tax base
3 of a Canadian person shall not include gross receipts from sales
4 shipped or delivered to any purchaser within the United States and
5 for which title transfers outside the United States. As used in
6 this subsection, "Canadian person" means a foreign person that does
7 not have a permanent establishment in the United States during the
8 tax year or that is not subject to taxation under the internal
9 revenue code for the tax year and is either of the following:

10 (a) An entity formed under the laws of Canada or a province of
11 Canada.

12 (b) An individual who is physically present in Canada in the
13 aggregate exceeding 182 days in the tax year.

14 (7) As used in this section:

15 (a) "Compensation" means, for a foreign person, the daily
16 compensation paid to each employee, officer, and director of the
17 foreign person multiplied by the number of days that the employee,
18 officer, or director has physical contact with the United States in
19 the tax year. Physical contact with the United States for any part
20 of a day equals 1 day.

21 (b) "Gross receipts" means, for a foreign person, gross
22 receipts as defined in section 6 from United States business
23 activity or from sources within the United States. Gross receipts
24 includes all sales for which title transfers within the United
25 States; proceeds from all services performed within the United
26 States; and a pro rata portion of proceeds from services performed
27 both within and outside of the United States based on costs of

1 performance.

2 (c) "Permanent establishment" means either of the following:

3 (i) If an income tax treaty applies to the foreign person, that
4 term as defined in that income tax treaty in effect between the
5 United States and another nation.

6 (ii) If an income tax treaty does not apply to the foreign
7 person, that term as defined in the United States model income tax
8 convention.

9 (d) "Property" means, for a foreign person, all of the
10 taxpayer's real and tangible personal property owned or rented in
11 the United States during the tax year.

12 (e) "United States person" means that term as defined in
13 section 7701(a)(30) of the internal revenue code.

14 Sec. 13. (1) A taxpayer with gross receipts of more than
15 \$350,000.00 but not more than \$15,000,000.00 or that amount as
16 annually adjusted for inflation using the Detroit consumer price
17 index shall elect 1 of the following options:

18 (a) Calculate its tax liability under this act.

19 (b) Calculate its tax liability under the business income tax
20 act.

21 (2) An election under subsection (1) shall be made every 3
22 years if the taxpayer remains eligible for the election under this
23 section.

24 (3) A taxpayer with gross receipts equal to or less than
25 \$350,000.00 shall have no tax liability and no filing requirement
26 under this act.

27 Sec. 15. (1) An out-of-state person has nexus in this state if

1 that person engages in any of the following activities:

2 (a) Has 1 or more employees who are residents of this state
3 conducting business activity in this state.

4 (b) Owns, rents, leases, maintains, or has the right to use
5 and uses tangible personal or real property that is permanently or
6 temporarily physically located in this state.

7 (c) Has employees who own, rent, lease, use, or maintain an
8 office or other establishment in this state.

9 (d) Has agents, representatives, independent contractors,
10 brokers, or others acting on its behalf that own, rent, lease, use,
11 or maintain an office or other establishment in this state, and the
12 office or other establishment is used in the representation of the
13 out-of-state person in this state and is significantly associated
14 with the out-of-state person's ability to establish and maintain a
15 market in this state.

16 (e) Has goods delivered to this state in vehicles it owns,
17 rents, leases, uses, or maintains or has goods delivered by a
18 related party acting as a representative of the out-of-state
19 person.

20 (f) Regularly and systematically conducts business activity in
21 this state through its employees, agents, representatives,
22 independent contractors, brokers, or others acting on its behalf,
23 whether or not these individuals or organizations reside in this
24 state.

25 (2) For purposes of subsection (1)(f), regular and systematic
26 business activity including, but not limited to those activities
27 listed under this subsection, exists if at least 10 days of

1 business activity occur in this state during that person's taxable
2 year. If less than 10 days of business activity occur during that
3 person's taxable year, regular and systematic business activity may
4 exist depending on the facts and circumstances of the taxpayer's
5 in-state business activity. Any of the following activities
6 conducted by the taxpayer in this state for 2 or more days within a
7 taxable year will be rebuttably presumed to constitute regular and
8 systematic business activity:

9 (a) Soliciting sales.

10 (b) Making repairs or providing maintenance or service to
11 property sold or to be sold.

12 (c) Collecting current or delinquent accounts related to sales
13 of tangible personal property through assignment or otherwise.

14 (d) Installing or supervising installation at or after
15 shipment or delivery.

16 (e) Conducting training for employees, agents,
17 representatives, independent contractors, brokers, or others acting
18 on its behalf, or for customers or potential customers.

19 (f) Providing customers any kind of technical assistance or
20 service, including, but not limited to, engineering assistance,
21 design service, quality control, product inspections, or similar
22 services.

23 (g) Investigating, handling, or otherwise assisting in
24 resolving customer complaints.

25 (h) Providing consulting services.

26 (i) Soliciting, negotiating, or entering into franchising,
27 licensing, or similar agreements.

1 (3) Lawyers, accountants, investment bankers, and other
2 similar professionals in this state who perform services for an
3 out-of-state person in their professional capacity shall not be
4 considered to be conducting in-state business activity on behalf of
5 the out-of-state person.

6 (4) If none of the out-of-state person's business activities
7 in this state fall under the business activities described in
8 subsection (2) and its only contacts with this state are limited to
9 conducting any of the activities listed below, for less than 10
10 days, then those contacts will not be presumed to create nexus. If
11 an activity is listed in subdivisions (a) through (f) below but
12 also is described under subsection (2), then subsection (2) shall
13 control. If an out-of-state person's only in-state business
14 activity is listed in subdivision (g), that activity shall not be
15 considered as solicitation for the purposes of subsection (2).
16 Conducting any of the activities listed below for more than 10 days
17 does not necessarily create nexus. Whether nexus has been created
18 will depend on the facts and circumstances of the following in-
19 state business activities:

20 (a) Meeting with in-state suppliers of goods or services.

21 (b) In-state meeting with government representatives in their
22 official capacity.

23 (c) Attending occasional meetings, including, but not limited
24 to, board meetings, retreats, seminars, and conferences sponsored
25 by others.

26 (d) Holding recruiting or hiring events.

27 (e) Advertising in this state through various media.

1 (f) Renting customer lists to or from an in-state entity.

2 (g) Attending or participating at a trade show at which no
3 orders for goods are taken and no sales are made.

4 (5) Nexus shall be determined on a person-by-person basis. A
5 taxpayer that is a member of a unitary business group or a
6 consolidated taxpayer group not meeting the requirements of
7 subsections (1) through (4) shall not be deemed to have nexus with
8 this state based solely upon the in-state nexus of another member
9 of the taxpayer's unitary business group or consolidated taxpayer
10 group.

11 CHAPTER 3

12 Sec. 20. Except as otherwise provided under this act, any
13 unused carryforward for any credit under former 1975 PA 228 may be
14 applied for the 2007 tax year and any unused carryforward after
15 2007 shall be extinguished.

16 Sec. 21. (1) For tax years that begin after December 31, 2008,
17 a taxpayer that has been issued a tax voucher certificate under
18 section 23 of the Michigan early stage venture investment act of
19 2003, 2003 PA 296, MCL 125.2253, or any taxpayer to which all or a
20 portion of a tax voucher is transferred pursuant to the Michigan
21 early stage venture investment act of 2003, 2003 PA 296, MCL
22 125.2231 to 125.2263, may use the tax voucher to pay a liability of
23 the taxpayer due under this act.

24 (2) On and after November 21, 2005, the total amount of all
25 tax voucher certificates that shall be approved under this section,
26 section 37e of former 1975 PA 228, and the Michigan early stage
27 venture investment act of 2003, 2003 PA 296, MCL 125.2231 to

1 125.2263, shall not exceed an amount sufficient to allow the
2 Michigan early stage venture investment corporation to raise
3 \$450,000,000.00 for the purposes authorized under the Michigan
4 early stage venture investment act of 2003, 2003 PA 296, MCL
5 125.2231 to 125.2263. The total amount of all tax voucher
6 certificates under this section and section 37e of former 1975 PA
7 228 shall not exceed \$600,000,000.00.

8 (3) The department shall not approve a tax voucher certificate
9 under section 23(2) of the Michigan early stage venture investment
10 act of 2003, 2003 PA 296, MCL 125.2253, after December 31, 2015.

11 (4) For tax voucher certificates approved under subsection
12 (2), the amount of tax voucher certificates approved by the
13 department for use in any tax year shall not exceed 25% of the
14 total amount of all tax voucher certificates approved by the
15 department.

16 (5) Investors shall apply to the Michigan early stage venture
17 investment corporation for approval of tax voucher certificates at
18 the time and in the manner required under the Michigan early stage
19 venture investment act of 2003, 2003 PA 296, MCL 125.2231 to
20 125.2263.

21 (6) The Michigan early stage venture investment corporation
22 shall determine which investors are eligible for tax vouchers and
23 the amount of the tax vouchers allowed to each investor as provided
24 in the Michigan early stage venture investment act of 2003, 2003 PA
25 296, MCL 125.2231 to 125.2263.

26 (7) The tax voucher certificate, and any completed transfer
27 form that was issued pursuant to the Michigan early stage venture

1 investment act of 2003, 2003 PA 296, MCL 125.2231 to 125.2263,
2 shall be attached to the taxpayer's annual return under this act.
3 The department may prescribe and implement alternative methods of
4 reporting and recording ownership, transfer, and utilization of tax
5 voucher certificates that are not inconsistent with this act.

6 (8) A tax voucher shall be used to pay a liability of the
7 taxpayer due under this act only in a tax year that begins after
8 December 31, 2008. The amount of the tax voucher that may be used
9 to pay a liability of the taxpayer due under this act in any tax
10 year shall not exceed the lesser of the following:

11 (a) The amount of the tax voucher stated on the tax voucher
12 certificate held by the taxpayer.

13 (b) The amount authorized to be used in the tax year under the
14 terms of the tax voucher certificate.

15 (c) The taxpayer's liability due under this act for the tax
16 year for which the tax voucher is to be applied.

17 (9) The department shall administer transfers of tax voucher
18 certificates or the transfer of the right to be issued and receive
19 a tax voucher certificate as provided in the Michigan early stage
20 venture investment act of 2003, 2003 PA 296, MCL 125.2231 to
21 125.2263, and shall take any action necessary to enforce and
22 effectuate the permissible issuance and use of tax voucher
23 certificates in a manner authorized under this section and the
24 Michigan early stage venture investment act of 2003, 2003 PA 296,
25 MCL 125.2231 to 125.2263.

26 (10) If the amount of a tax voucher certificate held by a
27 taxpayer or transferee exceeds the amount the taxpayer or

1 transferee may use under subsection (8)(b) or (c) in a tax year,
2 that excess may be used by the taxpayer or transferee to pay,
3 subject to the limitations of subsection (8), any future liability
4 of the taxpayer or transferee under this act.

5 (11) If a taxpayer requests, the department shall issue
6 separate replacement tax voucher certificates, or replacement
7 approval letters, evidencing the right of the holder to be issued
8 and receive a tax voucher certificate in an aggregate amount equal
9 to the amount of a tax voucher certificate or an approval letter
10 presented by a taxpayer. Replacement tax voucher certificates may
11 be used, and replacement approval letters may be issued, to
12 evidence the right to be issued and receive a tax voucher
13 certificate that will be used for 1 or more of the following
14 purposes:

15 (a) To pay any liability of the taxpayer under this act to the
16 extent permitted in any tax year by subsection (8).

17 (b) To pay any liability of the taxpayer under and to the
18 extent allowed under section 270 of the income tax act of 1967,
19 1967 PA 281, MCL 206.270.

20 (c) To be transferred to a taxpayer who may use the
21 replacement tax voucher certificate to pay any liability under this
22 act to the extent allowed under subsection (8).

23 (d) To be transferred to a person who may use the tax voucher
24 certificate to pay any liability under and to the extent allowed
25 under section 270 of the income tax act of 1967, 1967 PA 281, MCL
26 206.270.

27 (12) As used in this section:

1 (a) "Investor" means that term as defined in the Michigan
2 early stage venture investment act of 2003, 2003 PA 296, MCL
3 125.2231 to 125.2263.

4 (b) "Certificate" means the certificate issued under section
5 23 of the Michigan early stage venture investment act of 2003, 2003
6 PA 296, MCL 125.2253.

7 (c) "Transferee" means a taxpayer to whom a tax voucher
8 certificate has been transferred under section 23 of the Michigan
9 early stage venture investment act of 2003, 2003 PA 296, MCL
10 125.2253, and this section.

11 Sec. 22. (1) A taxpayer may claim a credit against the tax
12 imposed by this act for 1 or more of the following as applicable:

13 (a) The credit allowed under subsection (2).

14 (b) The credit allowed under subsection (6).

15 (2) A taxpayer that is certified under the Michigan next
16 energy authority act, 2002 PA 593, MCL 207.821 to 207.827, as an
17 eligible taxpayer may claim a nonrefundable credit for the tax year
18 equal to the amount determined under subdivision (a) or (b),
19 whichever is less:

20 (a) The amount by which the taxpayer's tax liability
21 attributable to qualified business activity for the tax year
22 exceeds the taxpayer's baseline tax liability attributable to
23 qualified business activity.

24 (b) Ten percent of the amount by which the taxpayer's adjusted
25 qualified business activity performed in this state outside of a
26 renaissance zone for the tax year exceeds the taxpayer's adjusted
27 qualified business activity performed in this state outside of a

1 renaissance zone for the 2001 tax year under section 39e of former
2 1975 PA 228.

3 (3) For any tax year in which the eligible taxpayer's tax
4 liability attributable to qualified business activity for the tax
5 year does not exceed the taxpayer's baseline tax liability
6 attributable to qualified business activity, the eligible taxpayer
7 shall not claim the credit allowed under subsection (2).

8 (4) An affiliated group as defined in this act, a controlled
9 group of corporations as defined in section 1563 of the internal
10 revenue code and further described in 26 CFR 1.414(b)-1 and
11 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
12 defined by the internal revenue code shall not take the credit
13 allowed under subsection (2) unless the qualified business activity
14 of the group or entities is consolidated.

15 (5) A taxpayer that claims a credit under subsection (2) shall
16 attach a copy of each of the following as issued pursuant to the
17 Michigan next energy authority act, 2002 PA 593, MCL 207.821 to
18 207.827, to the annual return required under this act for each tax
19 year in which the taxpayer claims the credit allowed under
20 subsection (2):

21 (a) The proof of certification that the taxpayer is an
22 eligible taxpayer for the tax year.

23 (b) The proof of certification of the taxpayer's tax liability
24 attributable to qualified business activity for the tax year.

25 (c) The proof of certification of the taxpayer's baseline tax
26 liability attributable to qualified business activity.

27 (6) A taxpayer that is a qualified alternative energy entity

1 may claim a credit for the taxpayer's qualified payroll amount. A
2 taxpayer shall claim the credit under this subsection after all
3 allowable nonrefundable credits under this act.

4 (7) If the credit allowed under subsection (6) exceeds the tax
5 liability of the taxpayer for the tax year, that portion of the
6 credit that exceeds the tax liability shall be refunded.

7 (8) As used in this section:

8 (a) "Adjusted qualified business activity performed in this
9 state outside of a renaissance zone" means either of the following:

10 (i) Except as provided in subparagraph (ii), the taxpayer's
11 payroll for qualified business activity performed in this state
12 outside of a renaissance zone.

13 (ii) For a partnership, limited liability company, subchapter S
14 corporation, or individual, the amount determined under
15 subparagraph (i) plus the product of the following as related to the
16 taxpayer:

17 (A) Business income.

18 (B) The apportionment factor as determined under this chapter.

19 (C) The alternative energy business activity factor.

20 (b) "Alternative energy business activity factor" means a
21 fraction, the numerator of which is the ratio of the value of the
22 taxpayer's property used for qualified business activity and
23 located in this state outside of a renaissance zone for the year
24 for which the factor is being calculated to the value of all of the
25 taxpayer's property located in this state for that year plus the
26 ratio of the taxpayer's payroll for qualified business activity
27 performed in this state outside of a renaissance zone for that year

1 to all of the taxpayer's payroll in this state for that year and
2 the denominator of which is 2.

3 (c) "Alternative energy marine propulsion system",
4 "alternative energy system", "alternative energy vehicle", and
5 "alternative energy technology" mean those terms as defined in the
6 Michigan next energy authority act, 2002 PA 593, MCL 207.821 to
7 207.827.

8 (d) "Alternative energy zone" means a renaissance zone
9 designated as an alternative energy zone by the board of the
10 Michigan strategic fund under section 8a of the Michigan
11 renaissance zone act, 1996 PA 376, MCL 125.2688a.

12 (e) "Baseline tax liability attributable to qualified business
13 activity" means the taxpayer's tax liability for the 2001 tax year
14 under former 1975 PA 228 multiplied by the taxpayer's alternative
15 energy business activity factor for the 2001 tax year under former
16 1975 PA 228. A taxpayer with a 2001 tax year of less than 12 months
17 under former 1975 PA 228 shall annualize the amount calculated
18 under this subdivision as necessary to determine baseline tax
19 liability attributable to qualified business activity that reflects
20 a 12-month period.

21 (f) "Eligible taxpayer" means a taxpayer that has proof of
22 certification of qualified business activity under the Michigan
23 next energy authority act, 2002 PA 593, MCL 207.821 to 207.827.

24 (g) "Payroll" means total salaries and wages before deducting
25 any personal or dependency exemptions.

26 (h) "Qualified alternative energy entity" means a taxpayer
27 located in an alternative energy zone.

1 (i) "Qualified business activity" means research, development,
2 or manufacturing of an alternative energy marine propulsion system,
3 an alternative energy system, an alternative energy vehicle,
4 alternative energy technology, or renewable fuel.

5 (j) "Qualified employee" means an individual who is employed
6 by a qualified alternative energy entity, whose job
7 responsibilities are related to the research, development, or
8 manufacturing activities of the qualified alternative energy
9 entity, and whose regular place of employment is within an
10 alternative energy zone.

11 (k) "Qualified payroll amount" means an amount equal to
12 payroll of the qualified alternative energy entity attributable to
13 all qualified employees in the tax year of the qualified
14 alternative energy entity for which the credit under subsection (6)
15 is being claimed, multiplied by the tax rate for that tax year.

16 (l) "Renaissance zone" means a renaissance zone designated
17 under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681
18 to 125.2696.

19 (m) "Renewable fuel" means 1 or more of the following:

20 (i) Biodiesel or biodiesel blends containing at least 20%
21 biodiesel. As used in this subparagraph, "biodiesel" means a diesel
22 fuel substitute consisting of methyl or ethyl esters produced from
23 the transesterification of animal or vegetable fats with methanol
24 or ethanol.

25 (ii) Biomass. As used in this subparagraph, "biomass" means
26 residues from the wood and paper products industries, residues from
27 food production and processing, trees and grasses grown

1 specifically to be used as energy crops, and gaseous fuels produced
2 from solid biomass, animal wastes, municipal waste, or landfills.

3 (n) "Tax liability attributable to qualified business
4 activity" means the taxpayer's tax liability multiplied by the
5 taxpayer's alternative energy business activity factor for the tax
6 year.

7 (o) "Tax rate" means the rate imposed under section 51e of the
8 income tax act of 1967, 1967 PA 281, MCL 206.51e, annualized as
9 necessary, for the tax year in which the qualified alternative
10 energy entity claims a credit under subsection (6).

11 Sec. 23. (1) For a period of time not to exceed 20 years as
12 determined by the Michigan economic growth authority, a taxpayer
13 that is an authorized business or an eligible taxpayer may claim a
14 credit against the tax imposed by section 10 equal to the amount
15 certified each year by the Michigan economic growth authority as
16 follows:

17 (a) For an authorized business for the tax year, an amount not
18 to exceed the payroll of the authorized business attributable to
19 employees who perform qualified new jobs as determined under the
20 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
21 207.810, multiplied by the tax rate.

22 (b) For an eligible business as determined under section
23 8(5)(a) of the Michigan economic growth authority act, 1995 PA 24,
24 MCL 207.808, an amount not to exceed 50% of the payroll of the
25 eligible taxpayer attributable to employees who perform retained
26 jobs as determined under the Michigan economic growth authority
27 act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate

1 for the tax year.

2 (c) For an eligible business as determined under section
3 8(5)(b) of the Michigan economic growth authority act, 1995 PA 24,
4 MCL 207.808, an amount not to exceed the payroll of the eligible
5 taxpayer attributable to employees who perform retained jobs as
6 determined under the Michigan economic growth authority act, 1995
7 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate for the
8 tax year.

9 (2) A taxpayer shall not claim a credit under this section
10 unless the Michigan economic growth authority has issued a
11 certificate to the taxpayer. The taxpayer shall attach the
12 certificate to the annual return filed under this act on which a
13 credit under this section is claimed.

14 (3) The certificate required by subsection (2) shall state all
15 of the following:

16 (a) The taxpayer is an authorized business or an eligible
17 taxpayer.

18 (b) The amount of the credit under this section for the
19 authorized business or eligible taxpayer for the designated tax
20 year.

21 (c) The taxpayer's federal employer identification number or
22 the Michigan department of treasury number assigned to the
23 taxpayer.

24 (4) The Michigan economic growth authority may certify a
25 credit under this section based on an agreement entered into prior
26 to January 1, 2008 pursuant to section 37c of former 1975 PA 228.
27 The number of years for which the credit may be claimed under this

1 section shall equal the maximum number of years designated in the
2 resolution reduced by the number of years for which a credit has
3 been claimed under section 37c of former 1975 PA 228.

4 (5) If the credit allowed under this section exceeds the tax
5 liability of the taxpayer for the tax year, that portion of the
6 credit that exceeds the tax liability of the taxpayer shall be
7 refunded.

8 (6) A taxpayer that claims a credit under subsection (1)(a),
9 section 24(1)(a), or section 37c or 37d of former 1975 PA 228, that
10 has an agreement with the Michigan economic growth authority based
11 on qualified new jobs as defined in section 3(n)(ii) of the
12 Michigan economic growth authority act, 1995 PA 24, MCL 207.803,
13 and that removes from this state 51% or more of those qualified new
14 jobs within 3 years after the first year in which the taxpayer
15 claims a credit described in this subsection shall pay to the
16 department no later than 12 months after those qualified new jobs
17 are removed from the state an amount equal to the total of all
18 credits described in this subsection that were claimed by the
19 taxpayer.

20 (7) If the Michigan economic growth authority or a designee of
21 the Michigan economic growth authority requests that a taxpayer who
22 claims the credit under this section get a statement prepared by a
23 certified public accountant verifying that the actual number of new
24 jobs created is the same number of new jobs used to calculate the
25 credit under this section, the taxpayer shall get the statement and
26 attach that statement to its annual return under this act on which
27 the credit under this section is claimed.

1 (8) For a credit allowed under this section, an affiliated
2 group as defined in this act, a controlled group of corporations as
3 defined in section 1563 of the internal revenue code and further
4 described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an
5 entity under common control as defined by the internal revenue code
6 shall claim only 1 credit for each tax year as follows:

7 (a) For an authorized business, for each expansion or location
8 evidenced by a written agreement whether or not a combined or
9 consolidated return is filed.

10 (b) For an eligible taxpayer, as provided in each written
11 agreement whether or not a combined or consolidated return is
12 filed.

13 (9) A credit shall not be claimed by a taxpayer under this
14 section if the taxpayer's initial certification as required in
15 subsection (3) is issued after December 31, 2013.

16 (10) As used in this section:

17 (a) "Authorized business", "facility", "full-time job",
18 "qualified high-technology business", and "written agreement" mean
19 those terms as defined in the Michigan economic growth authority
20 act, 1995 PA 24, MCL 207.801 to 207.810.

21 (b) "Eligible taxpayer" means an eligible business that meets
22 the criteria under section 8(5) of the Michigan economic growth
23 authority act, 1995 PA 24, MCL 207.808.

24 (c) "Michigan economic growth authority" means the Michigan
25 economic growth authority created in the Michigan economic growth
26 authority act, 1995 PA 24, MCL 207.801 to 207.810.

27 (d) "Payroll" means the total salaries and wages before

1 deducting any personal or dependency exemptions.

2 (e) "Qualified new jobs" means 1 or more of the following:

3 (i) The average number of full-time jobs at a facility of an
4 authorized business for a tax year in excess of the average number
5 of full-time jobs the authorized business maintained in this state
6 prior to the expansion or location as that is determined under the
7 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
8 207.810.

9 (ii) The average number of full-time jobs at a facility created
10 by an eligible business within 120 days before becoming an
11 authorized business that is in excess of the average number of
12 full-time jobs that the business maintained in this state 120 days
13 before becoming an authorized business, as determined under the
14 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
15 207.810.

16 (f) "Tax rate" means the rate imposed under section 51e of the
17 income tax act of 1967, 1967 PA 281, MCL 206.51e, for the tax year
18 in which the tax year of the taxpayer for which the credit is being
19 computed begins.

20 Sec. 24. (1) A taxpayer that is a business located and
21 conducting business activity within a renaissance zone may claim a
22 credit against the tax imposed by this act for the tax year to the
23 extent and for the duration provided pursuant to the Michigan
24 renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, equal
25 to the lesser of the following:

26 (a) The tax liability attributable to business activity
27 conducted within a renaissance zone in the tax year.

1 (b) Ten percent of adjusted services performed in a designated
2 renaissance zone.

3 (c) For a taxpayer located and conducting business activity in
4 a renaissance zone before January 1, 2008, the product of the
5 following:

6 (i) The credit claimed under section 39b of former 1975 PA 228
7 for the tax year ending in 2007.

8 (ii) The ratio of the taxpayer's payroll in this state in the
9 tax year divided by the taxpayer's payroll in this state in its tax
10 year ending in 2007 under former 1975 PA 228.

11 (iii) The ratio of the taxpayer's renaissance zone business
12 activity factor for the tax year divided by the taxpayer's
13 renaissance zone business activity factor for its tax year ending
14 in 2007 under section 39b of former 1975 PA 228.

15 (2) Any portion of the taxpayer's tax liability that is
16 attributable to illegal activity conducted in the renaissance zone
17 shall not be used to calculate a credit under this section.

18 (3) The credit allowed under this section continues through
19 the tax year in which the renaissance zone designation expires.

20 (4) If the amount of the credit allowed under this section
21 exceeds the tax liability of the taxpayer for the tax year, that
22 portion of the credit that exceeds the tax liability shall not be
23 refunded.

24 (5) A taxpayer that claims a credit under this section shall
25 not employ, pay a speaker fee to, or provide any remuneration,
26 compensation, or consideration to any person employed by the state,
27 the state administrative board created in 1921 PA 2, MCL 17.1 to

1 17.3, or the renaissance zone review board created in 1996 PA 376,
2 MCL 125.2681 to 125.2696, whose employment relates or related in
3 any way to the authorization or enforcement of the credit allowed
4 under this section for any year in which the taxpayer claims a
5 credit under this section and for the 3 years after the last year
6 that a credit is claimed.

7 (6) To be eligible for the credit allowed under this section,
8 an otherwise qualified taxpayer shall file an annual return under
9 this act in a format determined by the department.

10 (7) Any portion of the taxpayer's tax liability that is
11 attributable to business activity related to the operation of a
12 casino, and business activity that is associated or affiliated with
13 the operation of a casino, including, but not limited to, the
14 operation of a parking lot, hotel, motel, or retail store, shall
15 not be used to calculate a credit under this section.

16 (8) As used in this section:

17 (a) "Adjusted services performed in a designated renaissance
18 zone" means either of the following:

19 (i) Except as provided in subparagraph (ii), the sum of the
20 taxpayer's payroll for services performed in a designated
21 renaissance zone plus an amount equal to the amount deducted in
22 arriving at federal taxable income for the tax year for
23 depreciation, amortization, or immediate or accelerated write-off
24 for tangible property exempt under section 7ff of the general
25 property tax act, 1893 PA 206, MCL 211.7ff, in the tax year or, for
26 new property, in the immediately following tax year.

27 (ii) For a partnership, limited liability company, subchapter S

1 corporation, or individual, the amount determined under
2 subparagraph (i) plus the product of the following as related to the
3 taxpayer if greater than zero:

4 (A) Business income.

5 (B) The ratio of the taxpayer's total sales in this state
6 during the tax year divided by the taxpayer's total sales
7 everywhere during the tax year.

8 (C) The renaissance zone business activity factor.

9 (b) "Casino" means a casino regulated by this state pursuant
10 to the Michigan gaming control and revenue act, the Initiated Law
11 of 1996, MCL 432.201 to 432.226.

12 (c) "New property" means property that has not been subject
13 to, or exempt from, the collection of taxes under the general
14 property tax act, 1893 PA 206, MCL 211.1 to 211.157, and has not
15 been subject to, or exempt from, ad valorem property taxes levied
16 in another state, except that receiving an exemption as inventory
17 property does not disqualify property.

18 (d) "Payroll" means total salaries and wages before deducting
19 any personal or dependency exemptions.

20 (e) "Renaissance zone" means that term as defined in the
21 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
22 125.2696.

23 (f) "Renaissance zone business activity factor" means a
24 fraction, the numerator of which is the ratio of the average value
25 of the taxpayer's property located in a designated renaissance zone
26 to the average value of the taxpayer's property in this state plus
27 the ratio of the taxpayer's payroll for services performed in a

1 designated renaissance zone to all of the taxpayer's payroll in
2 this state and the denominator of which is 2.

3 (g) "Tax liability attributable to business activity conducted
4 within a renaissance zone" means the taxpayer's tax liability
5 multiplied by the renaissance zone business activity factor.

6 Sec. 25. (1) Subject to the criteria under this section, a
7 qualified taxpayer that has a preapproval letter issued after
8 December 31, 2007 and before January 1, 2013, or a taxpayer that
9 received a preapproval letter prior to January 1, 2008 under
10 section 38g of former 1975 PA 228 and has not received a
11 certificate of completion prior to the taxpayer's last tax year,
12 provided that the project is completed not more than 5 years after
13 the preapproval letter for the project is issued, or an assignee
14 under subsection (20), (21), or (22) may claim a credit that has
15 been approved under subsection (2), (3), or (4) against the tax
16 imposed by this act equal to either of the following:

17 (a) If the total of all credits for a project is \$1,000,000.00
18 or less, 10% of the cost of the qualified taxpayer's eligible
19 investment paid or accrued by the qualified taxpayer on an eligible
20 property provided that the project does not exceed the amount
21 stated in the preapproval letter. If eligible investment exceeds
22 the amount of eligible investment in the preapproval letter for
23 that project, the total of all credits for the project shall not
24 exceed the total of all credits on the certificate of completion.

25 (b) If the total of all credits for a project is more than
26 \$1,000,000.00 but \$30,000,000.00 or less and, except as provided in
27 subsection (6)(b), the project is located in a qualified local

1 governmental unit, a percentage as determined by the Michigan
2 economic growth authority not to exceed 10% of the cost of the
3 qualified taxpayer's eligible investment as determined under
4 subsection (9) paid or accrued by the qualified taxpayer on an
5 eligible property. If eligible investment exceeds the amount of
6 eligible investment in the preapproval letter for that project, the
7 total of all credits for the project shall not exceed the total of
8 all credits on the certificate of completion.

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

1 authority or his or her designee shall issue a preapproval letter
2 that states that the taxpayer is a qualified taxpayer; the maximum
3 total eligible investment for the project on which credits may be
4 claimed and the maximum total of all credits for the project when
5 the project is completed and a certificate of completion is issued;
6 and the project number assigned by the Michigan economic growth
7 authority. If a project is denied under this subsection, a taxpayer
8 is not prohibited from subsequently applying under this subsection
9 for the same project or for another project. If the authority
10 approves a total of all credits for all projects under this
11 subsection of less than \$10,000,000.00 in a calendar year, the
12 authority may carry forward for 1 year only the difference between
13 \$10,000,000.00 and the total of all credits for all projects under
14 this subsection approved in the immediately preceding calendar
15 year. The Michigan economic growth authority shall develop and
16 implement the use of the application form to be used for projects
17 under this subsection. Before the Michigan economic growth
18 authority substantially changes the form, the Michigan economic
19 growth authority shall adopt the changes by resolution and give
20 notice of the proposed resolution to the secretary of the senate,
21 to the clerk of the house of representatives, and to each person
22 who requested from the Michigan economic growth authority in
23 writing or electronically to be notified regarding proposed
24 resolutions. The notice and proposed resolution and all attachments
25 shall be published on the Michigan economic growth authority's
26 internet website. The Michigan economic growth authority shall hold
27 a public hearing not sooner than 14 days and not later than 30 days

1 after the date notice of a proposed resolution is given and offer
2 an opportunity for persons to present data, views, questions, and
3 arguments. The Michigan economic growth authority board members or
4 1 or more persons designated by the Michigan economic growth
5 authority who have knowledge of the subject matter of the proposed
6 resolution shall be present at the public hearing and shall
7 participate in the discussion of the proposed resolution. The
8 Michigan economic growth authority may act on the proposed
9 resolution no sooner than 14 days after the public hearing. The
10 Michigan economic growth authority shall produce a final decision
11 document that describes the basis for its decision. The final
12 resolution and all attachments and the decision document shall be
13 provided to the secretary of the senate and to the clerk of the
14 house of representatives and shall be published on the Michigan
15 economic growth authority's internet website. The notice shall
16 include all of the following:

17 (a) A copy of the proposed resolution and all attachments.

18 (b) A statement that any person may express any data, views,
19 or arguments regarding the proposed resolution.

20 (c) The address to which written comments may be sent and the
21 date by which comments must be mailed or electronically
22 transmitted, which date shall not be restricted to only before the
23 date of the public hearing.

24 (d) The date, time, and place of the public hearing.

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

1 of the project under this subsection. An application under this
2 subsection shall state whether the project is a multiphase project.
3 The chairperson of the Michigan economic growth authority or his or
4 her designee is authorized to approve an application or project
5 under this subsection. Only the chairperson of the Michigan
6 economic growth authority is authorized to deny an application or
7 project under this subsection. A project shall be approved or
8 denied not more than 45 days after receipt of the application. If
9 the chairperson of the Michigan economic growth authority or his or
10 her 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 total of all credits for all projects approved under this
14 subsection shall not exceed \$30,000,000.00 in any calendar year. If
15 the authority approves a total of all credits for all projects
16 under this subsection of less than \$30,000,000.00 in a calendar
17 year, the authority may carry forward for 1 year only the
18 difference between \$30,000,000.00 and the total of all credits for
19 all projects approved under this subsection in the immediately
20 preceding calendar year. The criteria in subsection (7) shall be
21 used when approving projects under this subsection. When approving
22 projects under this subsection, priority shall be given to projects
23 on a facility. The total of all credits for an approved project
24 under this subsection shall not exceed \$1,000,000.00. A taxpayer
25 may apply under this subsection instead of subsection (4) for
26 approval of a project that will be for more than \$10,000,000.00,
27 but the total of all credits for that project shall not exceed

1 \$1,000,000.00. If the chairperson of the Michigan economic growth
2 authority or his or her designee approves a project under this
3 subsection, the chairperson of the Michigan economic growth
4 authority or his or her designee shall issue a preapproval letter
5 that states that the taxpayer is a qualified taxpayer; the maximum
6 total eligible investment for the project on which credits may be
7 claimed and the maximum total of all credits for the project when
8 the project is completed and a certificate of completion is issued;
9 and the project number assigned by the Michigan economic growth
10 authority. If a project is denied under this subsection, a taxpayer
11 is not prohibited from subsequently applying under this subsection
12 or subsection (4) for the same project or for another project.

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

1 deny the application within 5 days after receipt of the
2 application, the application is considered approved. The Michigan
3 economic growth authority shall approve a limited number of
4 projects under this subsection during each calendar year as
5 provided in subsection (6). The Michigan economic growth authority
6 shall use the criteria in subsection (7) when approving projects
7 under this subsection, when determining the total amount of
8 eligible investment, and when determining the percentage of
9 eligible investment for the project to be used to calculate a
10 credit. The total of all credits for an approved project under this
11 subsection shall not exceed the amount designated in the
12 preapproval letter for that project. If the Michigan economic
13 growth authority approves a project under this subsection, the
14 Michigan economic growth authority shall issue a preapproval letter
15 that states that the taxpayer is a qualified taxpayer; the
16 percentage of eligible investment for the project determined by the
17 Michigan economic growth authority for purposes of subsection
18 (1)(b); the maximum total eligible investment for the project on
19 which credits may be claimed and the maximum total of all credits
20 for the project when the project is completed and a certificate of
21 completion is issued; and the project number assigned by the
22 Michigan economic growth authority. The Michigan economic growth
23 authority shall send a copy of the preapproval letter to the
24 department. If a project is denied under this subsection, a
25 taxpayer is not prohibited from subsequently applying under this
26 subsection or subsection (3) for the same project or for another
27 project.

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

6 (6) The Michigan economic growth authority may approve not
7 more than 17 projects each calendar year under subsection (4), and
8 the following limitations apply:

9 (a) Of the 17 projects allowed under this subsection, the
10 total of all credits for each project may be more than
11 \$10,000,000.00 but \$30,000,000.00 or less for up to 2 projects.

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

22 (c) Of the 2 projects allowed under subdivision (a), 1 may be
23 a project that also qualifies under subdivision (b).

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

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

13 (a) The overall benefit to the public.

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

16 (c) Creation of jobs.

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

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

22 (f) The level of private sector contribution.

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

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

1 (i) Whether the financial statements of the qualified taxpayer
2 indicate that it is financially sound and that the project is
3 economically sound.

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

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

13 (9) If, after a taxpayer's project has been approved and the
14 taxpayer has received a preapproval letter but before the project
15 is completed, the taxpayer determines that the project cannot be
16 completed as preapproved, the taxpayer may petition the Michigan
17 economic growth authority to amend the project. The total of
18 eligible investment for the project as amended shall not exceed the
19 amount allowed in the preapproval letter for that project.

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

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

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

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

1 subsection (4). When the completion of the project is verified, a
2 certificate of completion shall be issued to each qualified
3 taxpayer that has made eligible investment on that eligible
4 property. The certificate of completion shall state the total
5 amount of all credits for the project and that total shall not
6 exceed the maximum total of all credits listed in the preapproval
7 letter for the project under subsection (2), (3), or (4) as
8 applicable and shall state all of the following:

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

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

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

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

15 (e) The project number.

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

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

23 (12) Except as otherwise provided in this section, qualified
24 taxpayers shall claim credits under this section in the tax year in
25 which the certificate of completion is issued. For a project
26 approved under subsection (4) for which the total of all credits is
27 more than \$10,000,000.00 but \$30,000,000.00 or less, the qualified

1 taxpayer shall claim 10% of its approved credit each year for 10
2 years. A credit assigned based on a multiphase project shall be
3 claimed in the year in which the credit is assigned.

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

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

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

26 (16) Except as otherwise provided in this subsection or
27 subsection (10), (18), (20), (21), or (22), a credit under this

1 section shall be claimed in the tax year in which the certificate
2 of completion is issued to the qualified taxpayer. For a project
3 described in subsection (11)(f) for which a schedule for claiming
4 annual credit amounts is designated on the certificate of
5 completion by the Michigan economic growth authority, the annual
6 credit amount shall be claimed in the tax year specified on the
7 certificate of completion.

8 (17) The credits approved under this section shall be
9 calculated after application of all other credits allowed under
10 this act. The credits under this section shall be calculated before
11 the calculation of the credit under section 23.

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

1 amount for a credit allowed under subsection (4) begins to run in
2 the tax year for which the annual credit amount is designated on
3 the certificate of completion issued under this section. A credit
4 carryforward available under section 38g of former 1975 PA 228 that
5 is unused at the end of the last tax year may be claimed against
6 the tax imposed under act for the years the carryforward would have
7 been available under former 1975 PA 228.

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

24 (20) For credits under this section for projects for which a
25 certificate of completion is issued before January 1, 2006 and
26 except as otherwise provided in this subsection, if a qualified
27 taxpayer pays or accrues eligible investment on or to an eligible

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

1 assign a credit or any portion of a credit assigned under this
2 subsection. A purchaser may subsequently assign a credit or any
3 portion of a credit assigned to the purchaser under this subsection
4 to a lessee of the eligible property. The credit assignment under
5 this subsection shall be made on a form prescribed by the Michigan
6 economic growth authority. The qualified taxpayer shall send a copy
7 of the completed assignment form to the Michigan economic growth
8 authority in the tax year in which the assignment is made. The
9 assignee shall attach a copy of the completed assignment form to
10 its annual return required to be filed under this act, for the tax
11 year in which the assignment is made and the assignee first claims
12 a credit, which shall be the same tax year. In addition to all
13 other procedures under this subsection, the following apply if the
14 total of all credits for a project is more than \$10,000,000.00 but
15 \$30,000,000.00 or less:

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

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

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

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

26 (21) Except as otherwise provided in this subsection, for
27 projects for which a certificate of completion is issued before

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

1 attach a copy of the completed assignment form to its annual return
2 required under this act, for the tax year in which the assignment
3 is made and the assignee first claims a credit, which shall be the
4 same tax year. A credit assignment based on a credit for a
5 component of a multiphase project that is completed before January
6 1, 2006 shall be made under this subsection. In addition to all
7 other procedures under this subsection, 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 (d) The qualified taxpayer shall not assign more than the
19 annual credit amount for each tax year.

20 (22) For projects approved under section 38g of former 1975 PA
21 228 for which a certificate of completion is issued on and after
22 January 1, 2006, a qualified taxpayer may assign all or a portion
23 of a credit allowed under section 38g(2), (3), or (33) of former
24 1975 PA 228 under this subsection. A credit assignment under this
25 subsection is irrevocable and, except for a credit assignment based
26 on a multiphase project, shall be made in the tax year in which a
27 certificate of completion is issued unless the assignee is an

1 unknown lessee. If a qualified taxpayer wishes to assign all or a
2 portion of its credit to a lessee but the lessee is unknown in the
3 tax year in which the certificate of completion is issued, the
4 qualified taxpayer may delay claiming and assigning the credit
5 until the first tax year in which the lessee is known. A qualified
6 taxpayer may claim a portion of a credit and assign the remaining
7 credit amount. If the qualified taxpayer both claims and assigns
8 portions of the credit, the qualified taxpayer shall claim the
9 portion it claims in the tax year in which a certificate of
10 completion is issued pursuant to section 38g of former 1975 PA 228.
11 An assignee may subsequently assign a credit or any portion of a
12 credit assigned under this subsection to 1 or more assignees. An
13 assignment under this subsection of a credit allowed under section
14 38g(2), (3), or (33) of former 1975 PA 228 shall not be made after
15 10 years after the first tax year in which that credit under
16 section 38g(2), (3), or (33) of former 1975 PA 228 may be claimed.
17 The credit assignment or a subsequent reassignment under this
18 subsection shall be made on a form prescribed by the Michigan
19 economic growth authority. The qualified taxpayer shall send a copy
20 of the completed assignment form to the Michigan economic growth
21 authority in the tax year in which an assignment or reassignment is
22 made. An assignee or subsequent reassignee shall attach a copy of
23 the completed assignment form to its annual return required under
24 this act, for the tax year in which the assignment or reassignment
25 is made and the assignee or reassignee first claims a credit, which
26 shall be the same tax year. A credit assignment based on a credit
27 for a component of a multiphase project that is completed before

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

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

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

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

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

20 (24) The Michigan economic growth authority may certify a
21 credit under this section based on an agreement entered into prior
22 to January 1, 2008 pursuant to section 38g of former 1975 PA 228.
23 The number of years for which the credit under this subsection may
24 be claimed under this act shall equal the maximum number of years
25 designated in the agreement reduced by the number of years for
26 which a credit had been claimed under section 38g of former 1975 PA
27 228.

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

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

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

23 (28) Eligible investment attributable or related to the
24 construction of a new landfill or the expansion of an existing
25 landfill regulated under part 115 of the natural resources and
26 environmental protection act, 1994 PA 451, MCL 324.11501 to
27 324.11550, shall not be used as a basis for a credit under this

1 section.

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

7 (a) A listing of the projects under subsection (3) that were
8 approved in the calendar year.

9 (b) The total amount of eligible investment for projects
10 approved under subsection (3) in the calendar year.

11 (30) As used in this section:

12 (a) "Annual credit amount" means the maximum amount that a
13 qualified taxpayer is eligible to claim each tax year for a project
14 for which the total of all credits is more than \$10,000,000.00 but
15 \$30,000,000.00 or less, which shall be 10% of the qualified
16 taxpayer's credit amount approved under subsection (3).

17 (b) "Authority" means a brownfield redevelopment authority
18 created under the brownfield redevelopment financing act, 1996 PA
19 381, MCL 125.2651 to 125.2672.

20 (c) "Authorized business", "full-time job", "new capital
21 investment", "qualified high-technology business", "retained jobs",
22 and "written agreement" mean those terms as defined in the Michigan
23 economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

24 (d) "Blighted", "brownfield plan", "eligible activities",
25 "facility", "functionally obsolete", "qualified local governmental
26 unit", and "response activity" mean those terms as defined in the
27 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651

1 to 125.2672.

2 (e) "Eligible investment" means demolition, construction,
3 restoration, alteration, renovation, or improvement of buildings or
4 site improvements on eligible property and the addition of
5 machinery, equipment, and fixtures to eligible property after the
6 date that eligible activities on that eligible property have
7 started pursuant to a brownfield plan under the brownfield
8 redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672,
9 and after the date that the preapproval letter is issued, if the
10 costs of the eligible investment are not otherwise reimbursed to
11 the taxpayer or paid for on behalf of the taxpayer from any source
12 other than the taxpayer. The addition of leased machinery,
13 equipment, or fixtures to eligible property by a lessee of the
14 machinery, equipment, or fixtures is eligible investment if the
15 lease of the machinery, equipment, or fixtures has a minimum term
16 of 10 years or is for the expected useful life of the machinery,
17 equipment, or fixtures, and if the owner of the machinery,
18 equipment, or fixtures is not the qualified taxpayer with regard to
19 that machinery, equipment, or fixtures.

20 (f) "Eligible property" means that term as defined in the
21 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
22 to 125.2672, except that, for purposes of subsection (2), all of
23 the following apply:

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

27 (A) Property for which eligible activities are identified

1 under the brownfield plan, is in a qualified local governmental
2 unit, and is a facility, functionally obsolete, or blighted.

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

8 (I) Infrastructure improvements that directly benefit the
9 eligible property.

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

13 (III) Lead or asbestos abatement.

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

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

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

27 (iii) Eligible property includes, to the extent included in the

1 brownfield plan, personal property located on the eligible
2 property.

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

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

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

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

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

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

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

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

27 (i) All eligible investment on property not in a qualified

1 local governmental unit that is a facility.

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

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

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

9 (i) Owns or leases eligible property.

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

25 Sec. 27. (1) A taxpayer, other than a taxpayer that is a
26 member of an affiliated group, a controlled group of corporations,
27 or an entity under common control, whose gross receipts allocated

1 or apportioned to this state are greater than \$350,000.00 but less
2 than \$1,000,000.00, may claim a credit against the tax imposed
3 under this act equal to the tax liability before all other credits
4 multiplied by a fraction the numerator of which is the difference
5 between the taxpayer's allocated or apportioned gross receipts and
6 \$1,000,000.00 and the denominator of which is \$650,000.00.

7 (2) A taxpayer, other than a taxpayer that is a member of an
8 affiliated group, a controlled group of corporations, or an entity
9 under common control, whose gross receipts are greater than
10 \$15,000,000.00 but less than \$50,000,000.00, may claim a credit
11 against the tax imposed under this act equal to the tax liability
12 before all other credits multiplied by a fraction the numerator of
13 which is the difference between the taxpayer's gross receipts and
14 \$50,000,000.00 and the denominator of which is \$35,000,000.00.

15 Sec. 28. (1) A taxpayer may claim a credit against the tax
16 imposed by this act equal to 25% of the property taxes paid on
17 eligible personal property in the tax year in which the credit
18 under this section is claimed. A taxpayer may claim a credit
19 against the tax imposed by this act equal to 20% of the property
20 taxes paid on personal property of a telephone company subject to
21 the tax levied under 1905 PA 282, MCL 207.1 to 207.21.

22 (2) A taxpayer may claim a credit under subsection (1) on a
23 form prescribed by the department. If applicable, the taxpayer
24 shall attach both of the following to the form:

25 (a) A copy of the statement of assessable personal property
26 prepared pursuant to section 19 of the general property tax act,
27 1893 PA 206, MCL 211.19, identifying the eligible personal property

1 for which the credit under subsection (1) is claimed.

2 (b) A copy of the assessment or bill issued to and paid by the
3 taxpayer for the eligible personal property for which the credit
4 under subsection (1) is claimed.

5 (3) If a credit allowed under subsection (1) exceeds the tax
6 liability of the taxpayer for the tax year, that portion of the
7 credit that exceeds the tax liability for the tax year shall not be
8 refunded but may be carried forward to offset tax liability in
9 subsequent tax years for 10 years or until used up, whichever
10 occurs first.

11 (4) As used in this section:

12 (a) "Eligible personal property" means personal property that
13 meets all of the following conditions:

14 (i) Was acquired by the taxpayer claiming the credit under
15 subsection (1) within 5 tax years immediately preceding the tax
16 year for which the taxpayer claims the credit under subsection (1).

17 (ii) Is classified as industrial personal property or
18 commercial personal property under section 34c of the general
19 property tax act, 1893 PA 206, MCL 211.34c.

20 (b) "Property taxes" means, except as otherwise provided in
21 this subdivision, taxes collected under the general property tax
22 act, 1893 PA 206, MCL 211.1 to 211.157. Property taxes do not
23 include any of the following:

24 (i) Except as otherwise provided under subsection (1), taxes
25 collected under 1905 PA 282, MCL 207.1 to 207.21.

26 (ii) Taxes levied under 1974 PA 198, MCL 207.551 to 207.572.

27 (iii) Taxes levied under the obsolete property rehabilitation

1 act, 2000 PA 146, MCL 125.2781 to 125.2797.

2 (iv) Taxes levied under the technology park development act,
3 1984 PA 385, MCL 207.702 to 207.718.

4 (v) Taxes levied under the commercial rehabilitation act, 2005
5 PA 210, MCL 207.841 to 207.856.

6 (vi) Any payments made by a taxpayer pursuant to a contract
7 with a local tax collecting unit to the extent that those payments
8 are made to reimburse taxing units for property taxes that would
9 otherwise be collected under the general property tax act, 1893 PA
10 206, MCL 211.1 to 211.157.

11 Sec. 29. (1) Subject to subsection (4), an eligible taxpayer
12 may claim the Michigan entrepreneurial credit equal to 100% of the
13 tax imposed by this act.

14 (2) An eligible taxpayer may claim the credit under subsection
15 (1) on a form prescribed by the department.

16 (3) As used in this section, "eligible taxpayer" means a
17 taxpayer that meets all of the following conditions:

18 (a) Had less than \$25,000,000.00 in gross receipts in the
19 immediately preceding tax year. The \$25,000,000.00 amount shall be
20 annually adjusted for inflation using the Detroit consumer price
21 index.

22 (b) Has created in this state or transferred into this state
23 not fewer than 20 new jobs in the immediately preceding tax year.
24 As used in this subdivision, "new jobs" means jobs that meet all of
25 the following criteria:

26 (i) Did not exist in this state in the immediately preceding
27 tax year.

1 (ii) Represent an overall increase in full-time equivalent jobs
2 of the taxpayer in this state in the immediately preceding tax
3 year.

4 (iii) Are not jobs into which employees transfer if the
5 employees worked in this state for the taxpayer, a related entity
6 of the taxpayer, or an entity with which the taxpayer files a
7 consolidated return under this act in other jobs prior to beginning
8 the new jobs.

9 (c) Has made a capital investment in this state of not less
10 than \$1,250,000.00 in the immediately preceding tax year.

11 (4) An eligible taxpayer may claim the Michigan entrepreneurial
12 credit under this section not more than 5 times in 5 consecutive
13 years, beginning in the first year that the taxpayer claims the
14 Michigan entrepreneurial credit.

15 (5) If a taxpayer relocates outside of this state within 5 years
16 after claiming the Michigan entrepreneurial credit under this section
17 and is no longer subject to the tax imposed under this act, that
18 taxpayer is liable in an amount equal to the total of all credits
19 received under this section. Any liability under this subsection shall
20 be collected under 1941 PA 122, MCL 205.1 to 205.31.

21 Sec. 30. A taxpayer subject to 1905 PA 282, MCL 207.1 to 207.21,
22 shall be allowed a credit against the tax imposed by this act for the
23 taxable year, an amount equal to 5% of the tax imposed under 1905 PA
24 282, MCL 207.1 to 207.21. The credit allowed by this section shall not
25 be in excess of the tax liability of the taxpayer under this act.
26 Except as provided in subsection (2), this subsection shall not apply
27 to a taxpayer who files pursuant to the provisions of section 47.

1 Sec. 31. (1) An eligible taxpayer may claim a credit against the
2 tax imposed by this act equal to 10% of the taxpayer's tax liability
3 in the tax year that the credit is claimed under this section.

4 (2) An eligible taxpayer may claim the credit under this section
5 on a form prescribed by the department.

6 (3) As used in this section:

7 (a) "Eligible taxpayer" means a taxpayer that is a restaurant
8 that has imposed a smoking ban during the entire tax year for which
9 the credit is claimed.

10 (b) "Restaurant" means a fixed or mobile establishment serving
11 food to the public for consumption on the premises.

12 Sec. 32. (1) A taxpayer that maintains not fewer than 450 full-
13 time qualified research and development employees or 450 qualified
14 management staff employees may claim a credit against the tax imposed
15 by this act equal to the aggregate amount of all credits calculated
16 under subsection (2).

17 (2) The credit under this section shall be calculated
18 individually for either each qualified research and development
19 employee or each qualified management staff employee, respectively,
20 depending on which type of employee qualifies the taxpayer for the
21 credit under this section, as follows:

22 (a) If the annual wages subject to taxation for federal medicare
23 payments for a qualified research and development employee or a
24 qualified management staff employee are greater than the average
25 annual wages subject to taxation for federal medicare payments for
26 employees who are not qualified research and development or qualified
27 management staff employees, then subtract the amount of the average

1 annual wages subject to taxation for federal medicare payments for
2 employees of the taxpayer who are not qualified research and
3 development employees or qualified management staff employees from
4 each qualified research and development employee's and qualified
5 management staff employee's annual wages subject to taxation for
6 federal medicare payments or \$200,000.00, whichever is less.

7 (b) Multiply the sum of the calculation in subdivision (a) by
8 0.10.

9 (3) If the amount of the credit exceeds the tax liability of the
10 taxpayer for the tax year, the excess shall not be refunded.

11 (4) As used in this section:

12 (a) "Administrative employee" means an employee who is not
13 primarily involved in manual work and whose work is directly related
14 to management policies or general management operations.

15 (b) "Executive employee" means an employee who is primarily
16 engaged in the management of all or part of the total business
17 enterprise.

18 (c) "Full-time" means a minimum of 35 hours of an employee's time
19 a week for the entire normal year of company operations.

20 (d) "Management staff related functions and services" means those
21 functions involving financial, personnel, administrative, legal,
22 planning, or similar business functions performed by qualified
23 management staff employees in this state.

24 (e) "Professional employee" means an employee whose primary
25 duties require knowledge of an advanced type in a field of science,
26 technology, business, or other similar field requiring specialized
27 study. Such knowledge is characterized by a prolonged course of

1 specialized study. A professional employee's work must be original and
2 creative in nature and cannot be standardized over a specific period
3 of time. The work must require consistent exercise of discretion, and
4 the employee must spend at least 80% of his or her time performing
5 work directly related to management policies and centralized
6 activities.

7 (f) "Qualified management staff employee" means a full-time
8 executive, administrative, or professional employee performing
9 management staff related functions and services in this state.

10 (g) "Qualified research and development employee" means a full-
11 time employee who performs laboratory, scientific, or experimental
12 testing and development activities related to new products, new uses
13 of existing products, or improving existing products as part of a
14 group of employees who perform those research and development
15 activities for the taxpayer in this state.

<<Sec. 34. (1) For tax years that begin on or after January 1, 2008
and end before January 1, 2018, an eligible taxpayer may claim a credit
against the tax imposed by this act equal to the amount of the capital
expenditures during the tax year for which the credit under this section
is claimed, not to exceed \$1.00.

(2) If the credit allowed under this section for the tax year
exceeds the taxpayer's tax liability for the tax year, that portion which
exceeds the tax liability for the tax year shall not be refunded and may
not be carried forward to offset tax liability in subsequent years.

(3) As used in this section:

(a) "Eligible taxpayer" means any of the following:

(i) A person who owns and operates a motorsports entertainment
complex.

(ii) A person who is the lessee and operator of a motorsports
entertainment complex or the lessee of the land on which a motorsports
entertainment complex is located and operates that motorsports
entertainment complex.

(iii) A person who operates and maintains a motorsports entertainment
complex under an operation and management agreement.

(b) "Motorsports entertainment complex" means a closed-course
motorsports facility, and its ancillary grounds and facilities, that
satisfies all of the following:

(i) Has at least 70,000 fixed seats for race patrons.

(ii) Has at least 6 scheduled days of motorsports events each

calendar year.

(iii) Serves food and beverages at the motorsports entertainment complex during motorsports events each calendar year through concession outlets, which are staffed by individuals who represent or are members of 1 or more nonprofit civic or charitable organizations that directly benefit from the concession outlets' sales.

(iv) Engages in tourism promotion.

(v) Has permanent exhibitions of motorsports history, events, or vehicles within the motorsports entertainment complex.

(c) "Motorsports event" means a motorsports race and its ancillary activities that have been sanctioned by a sanctioning body.

(d) "Sanctioning body" means the American motorcycle association (AMA); auto racing club of America (ARCA); championship auto racing teams (CART); grand American road racing association (GRAND AM); Indy racing league (IRL); national association for stock car auto racing (NASCAR); national hot rod association (NHRA); professional sportscar racing (PSR); sports car club of America (SCCA); United States auto club (USAC); Michigan state promoters association; or any successor organization or any other nationally or internationally recognized governing body of motorsports that establishes an annual schedule of motorsports events and grants rights to conduct the events, that has established and administers rules and regulations governing all participants involved in the events and all persons conducting the events, and that requires certain liability assurances, including insurance.

Sec. 35. (1) Except as otherwise limited in this section, a taxpayer not subject to the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, may claim a credit against the tax imposed under this act for the tax year equal to 50% of the aggregate amount of charitable contributions made by the taxpayer during the tax year to a public broadcast station as defined by 47 USC 397 that is not affiliated with an institution of higher education, a public library, an institution of higher learning located within this state, or the Michigan colleges foundation or of charitable contributions made to a nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of an institution of higher learning. If an institution of higher learning receives the contributions through a nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of the institution of higher learning, the tax credit shall be permitted only if the donee nonprofit corporation, fund, foundation, trust, or association is controlled or approved and reviewed by the governing boards of the institutions benefiting from the charitable contributions. The nonprofit corporation, fund, foundation, trust, or association shall provide copies of its annual independently audited financial statements to the auditor general and to the chairpersons of the senate and house appropriations committees.

(2) The amount allowable as a credit under this section for any tax year shall not exceed 5% of the tax liability for that year as determined without regard to this section or \$5,000.00, whichever is less.

(3) As used in this section, "institution of higher learning" means an educational institution located within this state meeting all of the

following requirements:

(a) It maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are carried on.

(b) It regularly offers education above the twelfth grade.

(c) It awards associate, bachelors, masters, or doctoral degrees or any combination of those degrees or higher education credits acceptable for those degrees granted by other institutions of higher learning.

(d) It is recognized by the state board of education as an institution of higher learning and appears as an institution of higher learning in the annual publication of the department of education entitled "the directory of institutions of higher education".

(4) As used in this section, "public library" means that term as defined in section 2 of the state aid to public libraries act, 1977 PA 89, MCL 397.552.

(5) The credit allowed under this section shall not exceed the tax liability of the taxpayer.

Sec. 36. (1) A qualified taxpayer with a rehabilitation plan certified after December 31, 2007 or a qualified taxpayer that has a rehabilitation plan certified before January 1, 2008 under section 39c of former 1975 PA 228 for the rehabilitation of a historic resource for which a certification of completed rehabilitation has been issued after the end of the taxpayer's last tax year may credit against the tax imposed by this act the amount determined pursuant to subsection (2) for the qualified expenditures for the rehabilitation of a historic resource pursuant to the rehabilitation plan in the year in which the certification of completed rehabilitation of the historic resource is issued provided that the certification of completed rehabilitation was issued not more than 5 years after the rehabilitation plan was certified by the Michigan historical center.

(2) The credit allowed under this section shall be 25% of the qualified expenditures that are eligible for the credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, 25% of the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to a historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code, subject to both of the following:

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

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

(3) To be eligible for the credit under this section, the taxpayer shall apply to and receive from the Michigan historical center certification that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource meet the criteria under subsection (6) and either of the following:

(a) All of the following criteria:

(i) The historic resource contributes to the significance of the

historic district in which it is located.

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

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

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

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

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

(6) Qualified expenditures for the rehabilitation of a historic resource may be used to calculate the credit under this section if the historic resource meets 1 of the criteria listed in subdivision (a) and 1 of the criteria listed in subdivision (b):

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

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

(ii) A contributing resource located within a historic district listed on the national register of historic places or the state register of historic sites.

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

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

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

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

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

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

(7) If a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or any portion of a credit allowed under this section to its partners, members, or shareholders, based on the partner's, member's, or shareholder's proportionate share of ownership or based on an alternative method approved by the department. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which a certificate of completed rehabilitation is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. A partner, member, or shareholder that is an assignee shall not subsequently assign a credit or any portion of a credit assigned to the partner, member, or shareholder under this subsection. A credit amount assigned under this subsection may be claimed against the partner's, member's, or shareholder's tax liability under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. A credit assignment under this subsection shall be made on a form prescribed by the department. The qualified taxpayer and assignees shall send a copy of the completed assignment form to the department in the tax year in which the assignment is made and attach a copy of the completed assignment form to the annual return required to be filed under this act for that tax year.

(8) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. An unused carryforward of a credit under section 39c of former 1975 PA 228 that was unused at the end of the last tax year for which former 1975 PA 228 was in effect may be claimed against the tax imposed under this act for the years the carryforward would have been available under section 39c of former 1975 PA 228.

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

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

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

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

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

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

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

(10) If a certification of completed rehabilitation is revoked under subsection (5) less than 5 years after the year in which a credit was claimed under this section or under section 39c of former 1975 PA 228, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the revocation:

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

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

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

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

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

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

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

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

(a) Certification of completed rehabilitation.

(b) Certification of historic significance related to the historic resource and the qualified expenditures used to claim a credit under this section.

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

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

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

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

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

(b) A description of each rehabilitation project certified.

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

(16) As used in this section:

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

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

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

(i) An owner-occupied personal residence or a historic resource

located within the property boundaries of that personal residence.

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

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

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

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

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

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

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

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

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

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

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

(k) "Qualified taxpayer" means a person that is an assignee under subsection (7) or either owns the resource to be rehabilitated or has a long-term lease agreement with the owner of the historic resource and that has qualified expenditures for the rehabilitation of the historic resource equal to or greater than 10% of the state equalized valuation of the property. If the historic resource to be rehabilitated is a portion of a historic or nonhistoric resource, the state equalized valuation of only that portion of the property shall be used for purposes of this subdivision. If the assessor for the local tax collecting unit in which the historic resource is located determines the state equalized valuation of that portion, that assessor's determination shall be used for purposes of this subdivision. If the assessor does not determine that state equalized valuation of that portion, qualified expenditures, for purposes of this subdivision, shall be equal to or greater than 5% of the

appraised value as determined by a certified appraiser. If the historic resource to be rehabilitated does not have a state equalized valuation, qualified expenditures for purposes of this subdivision shall be equal to or greater than 5% of the appraised value of the resource as determined by a certified appraiser.

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

Sec. 37.(1) Subject to the applicable limitations in this section, a taxpayer who does not claim a credit under section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, may credit against the tax imposed by this act 50% of the amount the taxpayer contributes during the taxable year to an endowment fund of a community foundation or a school foundation.

(2) The credit allowed by this section shall not exceed 5% of the taxpayer's tax liability for the tax year before claiming any credits allowed by this act or \$5,000.00, whichever is less.

(3) The credit allowed by this section is nonrefundable so that a taxpayer shall not claim under this section a total credit amount that reduces the taxpayer's tax liability to less than zero.

(4) As used in this section, "community foundation" means an organization that applies for certification on or before May 15 of the tax year for which the taxpayer is claiming the credit and that the department certifies for that tax year as meeting all of the following requirements:

(a) Qualifies for exemption from federal income taxation under section 501(c)(3) of the internal revenue code.

(b) Supports a broad range of charitable activities within the specific geographic area of this state that it serves, such as a municipality or county.

(c) Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the community or area served.

(d) Is publicly supported as defined by the regulations of the United States department of treasury, 26 CFR 1.170A-9(e)(10). To maintain certification, the community foundation shall submit documentation to the department annually that demonstrates compliance with this subdivision.

(e) Is not a supporting organization as an organization is described in section 509(a)(3) of the internal revenue code and the regulations of the United States department of treasury, 26 CFR 1.509(a)-4 and 1.509(a)-5.

(f) Meets the requirements for treatment as a single entity contained in the regulations of the United States department of treasury, 26 CFR 1.170A-9(e)(11).

(g) Except as provided in subsection (6), is incorporated or established as a trust at least 6 months before the beginning of the tax year for which the credit under this section is claimed and that has an endowment value of at least \$100,000.00 before the expiration of 18 months after the community foundation is incorporated or established.

(h) Has an independent governing body representing the general public's interest and that is not appointed by a single outside entity.

(i) Provides evidence to the department that the community foundation has, before the expiration of 6 months after the community foundation is incorporated or established, and maintains continually during the tax year for which the credit under this section is claimed, at least 1 part-time or full-time employee.

(j) For community foundations that have an endowment value of \$1,000,000.00 or more only, the community foundation is subject to an annual independent financial audit and provides copies of that audit to the department not more than 3 months after the completion of the audit. For community foundations that have an endowment value of less than \$1,000,000.00, the community foundation is subject to an annual review and an audit every third year.

(k) In addition to all other criteria listed in this subsection for a community foundation that is incorporated or established after the effective date of the amendatory act that added this subdivision, operates in a county of this state that was not served by a community foundation when the community foundation was incorporated or established or operates as a geographic component of an existing certified community foundation.

(5) On or before July 1 of each year, the department shall report to the house of representatives committee on taxation and the senate committee on finance the total amount of tax credits claimed under this section and under section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, for the immediately preceding tax year.

(6) A taxpayer may claim a credit under this section for contributions to a community foundation made before the expiration of the 18-month period after a community foundation was incorporated or established during which the community foundation must build an endowment value of \$100,000.00 as provided in subsection (4) (g). If the community foundation does not reach the required \$100,000.00 endowment value during that 18-month period, contributions to the community foundation made after the date on which the 18-month period expires shall not be used to calculate a credit under this section. At any time after the expiration of the 18-month period under subsection (4) (g) that the community foundation has an endowment value of \$100,000.00, the community foundation may apply to the department for certification under this section.

Sec. 38. (1) A taxpayer may claim a credit against the tax imposed by this act equal to the sum of 50% of the qualified expenses defined in subsection (5) (d) (i) and (ii) and 100% of the qualified expenses defined in subsection (5) (d) (iii) paid by the taxpayer in the tax year in each of the following circumstances:

(a) Except for apprentices trained under subdivision (b) or (c), an amount not to exceed \$2,000.00 for each apprentice trained by the taxpayer in the tax year.

(b) For companies that have a classification under the North American industrial classification system (NAICS) of 333511, 333512, 333513, 333514, or 333515 and for tax years that begin after December 31, 2003, an amount not to exceed \$4,000.00 for each apprentice trained by

the taxpayer in the tax year.

(c) For companies that have a classification under the North American industrial classification system (NAICS) of 333511, 333512, 333513, 333514, or 333515 and for tax years that begin after December 31, 2003, an amount not to exceed \$1,000.00 for each special apprentice trained by the taxpayer in the tax year.

(2) If the credit allowed under this section exceeds the tax liability of the taxpayer under this act for the tax year, that portion of the credit that exceeds the tax liability shall be refunded.

(3) The credit allowed under this section shall be claimed on the annual return required under section 72, or for a taxpayer that is not required to file an annual return, the department shall provide that the credit under this subsection may be claimed on the C-8044 form, a successor form for persons not required to file an annual return, or other simplified form prescribed by the department.

(4) For each year that this credit is in effect, the department of labor and economic growth shall prepare a report containing information including, but not limited to, the number of companies taking advantage of the apprenticeship credit, the number of apprentices participating in the program, the number of apprentices who complete a program the costs of which were the basis of a credit under this section, the number of apprentices that were hired by the taxpayer after the apprenticeship training was completed for which the taxpayer claimed a credit under this section for the costs of training that apprentice, information on the employment status of individuals who have completed an apprenticeship to the extent the information is available, and the fiscal impact of the apprenticeship credit. This report shall then be transmitted to the house tax policy and senate finance committees and to the house and senate appropriations committees. This report shall be due no later than the first day of March each year.

(5) As used in this section:

(a) "Apprentice" means a person who is a resident of this state, is 16 years of age or older but younger than 20 years of age, has not obtained a high school diploma, is enrolled in high school or a general education development (G.E.D.) test preparation program, and is trained by a taxpayer through a program that meets all of the following criteria:

(i) The program is registered with the bureau of apprenticeship and training of the United States department of labor.

(ii) The program is provided pursuant to an apprenticeship agreement signed by the taxpayer and the apprentice.

(iii) The program is filed with a local workforce development board.

(iv) The minimum term in hours for the program shall be not less than 4,000 hours.

(b) "Enrolled" means currently enrolled or expecting to enroll after a period of less than 3 months during which the program is not in operation and the apprentice is not enrolled.

(c) "Local workforce development board" means a board established by the chief elected official of a local unit of government pursuant to

the job training partnership act, Public Law 97-300, 96 Stat. 1322, that has the responsibility to ensure that the workforce needs of the employers in the geographic area governed by the local unit of government are met.

(d) "Qualified expenses" means all of the following expenses paid by the taxpayer in a tax year that begins after December 31, 1996 for expenses used to calculate a credit under subsection (1)(a) and after December 31, 2003 for expenses used to calculate a credit under subsection (1)(b) that were not paid for with funds the taxpayer received or retained that the taxpayer would not otherwise have received or retained and that are used for training an apprentice:

(i) Salary and wages paid to an apprentice.

(ii) Fringe benefits and other payroll expenses paid for the benefit of an apprentice.

(iii) Costs of classroom instruction and related expenses identified as costs for which the taxpayer is responsible under an apprenticeship agreement, including but not limited to tuition, fees, and books for college level courses taken while the apprentice is enrolled in high school.

(e) "Special apprentice" means a person who is not an apprentice as defined by subsection (5)(a), is a resident of this state, is 16 years of age or older but younger than 25 years of age, and is trained by a taxpayer through a program that meets all of the criteria under subdivision (a)(i) to (iv).

Sec. 39. (1) For tax years that begin after December 31, 2007 and before January 1, 2010, a taxpayer may claim a credit against the tax imposed by this act, subject to the applicable limitations provided by this section, in an amount equal to 50% of the fair market value of an automobile donated by the taxpayer to a qualified organization that intends to provide the automobile to a qualified recipient.

(2) The value of a passenger vehicle shall be determined by the qualified organization or by using the value of the automobile in the appropriate guide published by the national automobile dealers association, whichever is less.

(3) The amount allowable as a credit under this section for a tax year shall not exceed \$100.00.

(4) If the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that amount that exceeds the tax liability shall not be refunded.

(5) As used in this section, "qualified organization" and "qualified recipient" mean those terms as defined in section 4y of the use tax act, 1937 PA 94, MCL 205.94y.>>

CHAPTER 4

16

17

Sec. 40. Except as otherwise provided in this chapter, the tax

18

base of the taxpayer whose business activities are confined solely

19

to this state shall be allocated to this state.

20

Sec. 41. The tax base of a taxpayer whose business activities

21 are taxable both within and outside of this state is taxable in
22 another state in either of the following circumstances:

23 (a) The taxpayer is subject to a business privilege tax, a net
24 income tax, a franchise tax measured by net income, a franchise tax
25 for the privilege of doing business, or a corporate stock tax or a
26 tax of the type imposed under this act.

27 (b) The other state has jurisdiction to subject the taxpayer

1 to 1 or more of the taxes listed in subdivision (a) regardless of
2 whether the state does or does not subject the taxpayer to the tax.

3 Sec. 42. All of the tax base, other than the tax base derived
4 principally from transportation or financial services for a
5 financial organization or specifically allocated, shall be
6 apportioned to this state by multiplying the tax base by the sales
7 factor.

8 Sec. 43. (1) Except as otherwise provided in subsection (2)
9 and section 44, the sales factor is a fraction, the numerator of
10 which is the total sales of the taxpayer in this state during the
11 tax year and the denominator of which is the total sales of the
12 taxpayer everywhere during the tax year.

13 (2) The sales factor for a foreign person is a fraction, the
14 numerator of which is the total sales of the taxpayer in this state
15 during the tax year and the denominator of which is the total sales
16 of the taxpayer in the United States during the tax year.

17 (3) Sales of tangible personal property are in this state if
18 the property is shipped or delivered to any purchaser within this
19 state regardless of the free on board point or other conditions of
20 the sale. For the purposes of this subsection only, "state" means
21 any state of the United States, the District of Columbia, the
22 Commonwealth of Puerto Rico, any territory or possession of the
23 United States, or a political subdivision thereof.

24 (4) Sales in this state also include the receipts from the
25 sale, lease, rental, or licensing of real property located in this
26 state and the lease, rental, or licensing of tangible personal
27 property located in this state.

1 (5) Sales, other than sales of tangible personal property, are
2 in this state if the receipts are derived from customers within
3 this state. Sales in this state also include the receipts from the
4 performance of services if the recipient of the services receives
5 all of the benefit of the services in this state.

6 (6) Notwithstanding the provisions of subsection (5), receipts
7 derived by a mortgage company from the origination or sale of a
8 loan secured by residential real property is deemed a sale in this
9 state only if 1 or more of the following apply:

10 (a) The real property is located in this state.

11 (b) The real property is located both within this state and 1
12 or more other states and more than 50% of the fair market value of
13 the real property is located within this state.

14 (c) More than 50% of the real property is not located in any 1
15 state and the borrower is located in this state.

16 (7) For purposes of subsection (6), a borrower is considered
17 located in this state if the borrower's billing address is in this
18 state.

19 (8) For purposes of subsection (6), "mortgage company" means a
20 person who has greater than 70% of its revenues, in the ordinary
21 course of business, from the origination, sale, or servicing of
22 residential mortgage loans.

23 Sec. 44. (1) Notwithstanding section 43, a spun off
24 corporation that qualified to calculate its sales factor for 7
25 years under section 54 of former 1975 PA 228 may elect to calculate
26 its sales factor under this section for an additional 4 years
27 following those 7 years or 3 years if a taxpayer had an election

1 approved under section 54(1)(e) of former 1975 PA 228. Prior to the
2 end of the first year following the 7 years for which the taxpayer
3 qualified under section 54 of former 1975 PA 228 and if the spun
4 off corporation is not required to file amended returns under
5 section 54(5) of former 1975 PA 228, the spun off corporation may
6 request, in writing, approval from the state treasurer for the
7 election of the 4 additional years under this section. If the
8 taxpayer had an election approved under section 54(1)(e) of former
9 1978 PA 228, the taxpayer is not required to seek approval under
10 this section. The state treasurer must approve the election under
11 this subsection if the requirements of this section are met. The
12 request shall include all of the following:

13 (a) A statement that the spun off corporation qualifies for
14 the election under this section.

15 (b) A list of all corporations, limited liability companies,
16 and any other business entities that the spun off corporation
17 controlled at the time of the restructuring transaction.

18 (c) A commitment by the spun off corporation to invest at
19 least an additional \$200,000,000.00 of capital investment in this
20 state within the additional 4 years and maintain at least 80% of
21 the number of full-time equivalent employees in this state based on
22 the number of full-time equivalent employees in this state at the
23 beginning of the additional 4-year period for all of the additional
24 4 years; a commitment by the spun off corporation to invest an
25 additional \$400,000,000.00 in this state within the additional 4
26 years; or a commitment by the spun off corporation to invest a
27 total of \$1,300,000,000.00 in this state within the 11-year period

1 beginning with the year in which the restructuring transaction
2 under which a spun off corporation qualified under this subsection
3 was completed. The 4 years under this subdivision begins with the
4 eighth year following the tax year in which the restructuring
5 transaction under which a spun off corporation qualified under this
6 subsection was completed. For purposes of this subdivision, the
7 number of full-time equivalent employees includes employees in all
8 of the following circumstances:

9 (i) On temporary layoff.

10 (ii) On strike.

11 (iii) On a type of temporary leave other than the type under
12 subparagraphs (i) and (ii).

13 (iv) Transferred by the spun off corporation to a related
14 entity or to its immediately preceding former parent corporation.

15 (v) Transferred by the spun off corporation to another
16 employer because of the sale of the spun off corporation's location
17 in this state that was the work site of the employees.

18 (2) Prior to the end of the eleventh year following the
19 restructuring transaction under which a spun off corporation
20 qualified under subsection (1), a taxpayer that is a buyer of a
21 plant located in this state that was included in the initial
22 restructuring transaction under subsection (1) may elect to
23 calculate its sales factor under subsection (3) and disregard sales
24 by the taxpayer attributable to that plant to a former parent of a
25 spun off corporation and the sales attributable to the plant shall
26 be treated as sales by a spun off corporation. This election shall
27 extend for a period of 4 years following the date that the plant

1 was purchased reduced by the number of years for which the taxpayer
2 calculated its sales factor pursuant to section 54(2) of former
3 1975 PA 228. On or before the due date for filing the buyer's first
4 annual return under this act following the purchase of the plant,
5 the buyer shall request, in writing, approval from the state
6 treasurer for the election provided under this section and shall
7 attach a statement that the buyer qualifies for the election under
8 this section.

9 (3) A spun off corporation qualified under subsection (1) or
10 (2) that makes an election and is approved under subsection (1) or
11 (2) calculates its sales factor under section 43 subject to both of
12 the following:

13 (a) A purchaser in this state under section 43 does not
14 include a person that purchases from a seller that was included in
15 the purchaser's combined or consolidated annual return under this
16 act but, as a result of the restructuring transaction, ceased to be
17 included in the purchaser's combined or consolidated annual return
18 under this act. This subdivision applies only to sales that
19 originate from a plant located in this state.

20 (b) Total sales under section 43 do not include sales to a
21 purchaser that was a member of a Michigan affiliated group that had
22 included the seller in the filing of a combined or consolidated
23 annual return under this act but, as a result of the restructuring
24 transaction, ceased to include the seller. This subdivision applies
25 only to sales that originate from a plant located in this state to
26 a location in this state.

27 (4) At the end of the fourth tax year following an election

1 under this section, if the spun off corporation that elected to
2 calculate its sales factor under this section for the additional 4
3 years allowed under subsection (1) has failed to maintain the
4 required number of employees or failed to pay or accrue the capital
5 investment required under subsection (1)(c), the spun off
6 corporation shall file amended annual returns under this act for
7 the first through fourth tax years following the election under
8 this section, regardless of the statute of limitations under
9 section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax
10 plus interest based on the sales factor as calculated under section
11 43. Interest shall be calculated from the due date of the annual
12 return under this act or former 1975 PA 228 on which an exemption
13 under this section was first claimed.

14 (5) The amount of the spun off corporation's investment
15 commitments required under this section shall not be reduced by the
16 amount of any qualifying investments in Michigan plants that are
17 sold.

18 (6) As used in this section:

19 (a) "Spun off corporation" means an entity treated as a
20 controlled corporation under section 355 of the internal revenue
21 code. Controlled corporation includes a corporate subsidiary
22 created for the purpose of a restructuring transaction, a limited
23 liability company, or an operational unit or division with business
24 activities that were previously carried out as a part of the
25 distributing corporation.

26 (b) "Restructuring transaction" means a tax free distribution
27 under section 355 of the internal revenue code and includes tax

1 free transactions under section 355 of the internal revenue code
2 that are commonly referred to as spin offs, split ups, split offs,
3 or type D reorganizations.

4 Sec. 45. (1) The tax base of a taxpayer whose business
5 activities consist of transportation services rendered either
6 entirely within or partly within and partly outside this state
7 shall be determined under the provisions of this section and
8 section 46.

9 (2) The tax base attributable to this state of a taxpayer
10 described subsection (1), other than a taxpayer whose activity
11 consists of the transportation of oil or gas by pipeline, is that
12 portion of the tax base of the taxpayer derived from transportation
13 services wherever performed that the revenue miles of the taxpayer
14 in this state bear to the revenue miles of the taxpayer everywhere.

15 (3) The tax base attributable to this state of a taxpayer
16 whose business activity consists of the transportation both of
17 property and of individuals shall be that portion of the entire tax
18 base of the taxpayer that is equal to the sum of its passenger
19 miles and ton mile fractions, separately computed and individually
20 weighted by the ratio of gross receipts from passenger
21 transportation to total gross receipts from all transportation, and
22 by the ratio of gross receipts from freight transportation to total
23 gross receipts from all transportation, respectively.

24 (4) If the department determines that the information required
25 for the calculations under this section is not available or cannot
26 be obtained without unreasonable expense to the taxpayer, the
27 department may use other available information that in the opinion

1 of the department will result in an equitable allocation of the
2 taxpayer's receipts to this state.

3 Sec. 46. (1) The tax base attributable to this state of a
4 taxpayer whose business activity consists of the transportation of
5 oil by pipeline, is the tax base of the taxpayer in the ratio that
6 the barrel miles transported in this state bear to the barrel miles
7 transported by the taxpayer everywhere.

8 (2) The tax base attributable to this state of a taxpayer
9 whose business activities consists of the transportation of gas by
10 pipeline is the tax base of the taxpayer in the ratio that the
11 1,000 cubic feet miles transported in this state bear to the 1,000
12 cubic feet miles transported by the taxpayer everywhere.

13 Sec. 47. The tax base attributable to this state of a taxpayer
14 that is a financial organization is either of the following:

15 (a) The entire tax base of a taxpayer whose business
16 activities are confined solely to this state.

17 (b) For a taxpayer whose business activities are conducted
18 both within and outside of this state, that portion of its tax base
19 as its gross business in this state is to its gross business
20 everywhere during the period covered by its return. Gross business
21 is the sum of all of the following:

22 (i) Fees, commissions, or other compensation for financial
23 services.

24 (ii) Gross profits from trading in stocks, bonds, or other
25 securities.

26 (iii) Interest charged to customers for carrying debit balances
27 of margin accounts, without deduction of any costs incurred in

1 carrying the accounts.

2 (iv) Interest and dividends received.

3 (v) Any other gross income resulting from the operation as a
4 financial organization.

5 Sec. 48. (1) If the apportionment provisions of this act do
6 not fairly represent the extent of the taxpayer's business activity
7 in this state, the taxpayer may petition for or the treasurer may
8 require the following, with respect to all or a portion of the
9 taxpayer's business activity, if reasonable:

10 (a) Separate accounting.

11 (b) The exclusion of 1 or more of the factors.

12 (c) The inclusion of 1 or more additional factors that will
13 fairly represent the taxpayer's business activity in this state.

14 (d) The use of any other method to effectuate an equitable
15 allocation and apportionment of the taxpayer's tax base.

16 (2) An alternate method may be used only if it is approved by
17 the department.

18 (3) The apportionment provisions of this act shall fairly
19 represent the business activity attributed to the taxpayer in this
20 state, taken as a whole and without a separate examination of the
21 specific elements of the tax base unless it can be demonstrated
22 that the business activity attributed to the taxpayer in this state
23 is out of all appropriate proportion to the actual business
24 transacted in this state and leads to a grossly distorted result.
25 The tax levied under this act is an indivisible tax and not a
26 combination or series of several smaller taxes and relief from
27 apportionment shall be given only in extraordinary circumstances.

1 (4) The filing of a return or an amended return is not
2 considered a petition for the purposes of subsection (1).

3 CHAPTER 5

4 Sec. 50. (1) Each insurance company and each formerly
5 authorized insurance company with respect to premiums received
6 while an insurance company in this state shall pay to the
7 department a tax calculated as the product of .010735 times the
8 insurance company's tax base.

9 (2) The following are exempt from the tax imposed by this
10 section:

11 (a) Beginning January 1, 2008 and after being apportioned
12 under section 51(3), the first \$130,000,000.00 of disability
13 insurance premiums written in this state, other than credit
14 insurance and disability income insurance premiums, of each
15 insurance company subject to tax under this act. This exemption
16 shall be reduced by \$2.00 for each \$1.00 by which the insurance
17 company's gross premiums from insurance carrier services in this
18 state and outside this state exceed \$180,000,000.00.

19 (b) That portion of the tax base attributable to the services
20 provided by an attorney-in-fact to a reciprocal insurer pursuant to
21 chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200
22 to 500.7234.

23 (c) For tax years that begin after December 31, 2006, that
24 portion of the tax base attributable to a multiple employer welfare
25 arrangement that provides dental benefits only and that has a
26 certificate of authority under chapter 70 of the insurance code of
27 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

1 Sec. 51. (1) Except as otherwise provided in this section, the
2 tax base of an insurance company is the insurance company's
3 adjusted receipts as apportioned under subsection (3).

4 (2) The tax calculated on an insurance company under this
5 chapter is in lieu of all other privilege or franchise fees or
6 taxes, income taxes, or other taxes imposed by this act or any
7 other law of this state, except taxes levied on real and personal
8 property and except as otherwise provided in the insurance code of
9 1956, 1956 PA 218, MCL 500.100 to 500.8302.

10 (3) The tax base of an insurance company doing business both
11 within and outside of this state or partly within and outside of
12 this state shall be that portion of the tax base of the taxpayer
13 that the gross direct premiums received for insurance upon property
14 or risk in this state, deducting premiums upon policies not taken
15 and returned premiums on canceled policies from Michigan, bears to
16 the gross direct premiums received for insurance upon property or
17 risk, deducting premiums upon policies not taken and returned
18 premiums on canceled policies, everywhere.

19 (4) As used in this section:

20 (a) "Adjusted receipts" means, except as provided in
21 subdivision (b), the sum of all of the following:

22 (i) Rental and royalty receipts from a person that is not
23 either of the following:

24 (A) An affiliated insurance company.

25 (B) An insurance agent of the taxpayer licensed under chapter
26 12 of the insurance code of 1956, 1956 PA 218, MCL 500.1200 to
27 500.1247.

1 (ii) Gross direct premiums received for insurance on property
2 or risk, deducting premiums on policies not taken and returned
3 premiums on canceled policies.

4 (iii) Receipts from administrative services only contracts with
5 a person who is not an affiliated insurance company or an
6 affiliated nonprofit corporation.

7 (iv) Receipts from business activity other than the business of
8 insurance. As used in this subparagraph, "business of insurance"
9 means any activity related to the sale of insurance, payment of
10 claims, or claims handling, on policies written by the taxpayer.

11 (v) Charges not including interest charges attributable to
12 premiums paid on a deferred or installment basis.

13 (vi) Receipts from servicing carrier fees received from the
14 Michigan auto insurance placement facility pursuant to chapter 33
15 of the insurance code of 1956, 1956 PA 218, MCL 500.3301 to
16 500.3390.

17 (b) Adjusted receipts do not include any of the following:

18 (i) Receipts from interest, dividends, or proceeds from the
19 sale of assets.

20 (ii) Receipts, other than receipts described in subsection
21 (4)(a)(i) or (ii), from an affiliated insurance company, an
22 affiliated nonprofit corporation, an employee of the taxpayer, or
23 an insurance agent of the taxpayer licensed under chapter 12 of the
24 insurance code of 1956, 1956 PA 218, MCL 500.1200 to 500.1247.

25 (iii) Receipts on the sale of annuities.

26 (iv) Receipts on all reinsurance transactions.

27 (c) "Affiliated insurance company" means an insurance company

1 that is a member of an affiliated group with the taxpayer or, if
2 the insurance company does not issue stock, 50% or more of the
3 members of that insurance company's board of directors are members
4 of the taxpayer's board of directors.

5 (d) "Affiliated nonprofit corporation" means a nonprofit
6 corporation, of which 80% or more of the members of the board of
7 directors are members of the taxpayer's board of directors.

8 Sec. 52. (1) An insurance company may claim a credit against
9 the tax imposed under this act in the following amounts, but not to
10 exceed the limitations provided in this section:

11 (a) Amounts paid to the Michigan worker's compensation
12 placement facility pursuant to chapter 23 of the insurance code of
13 1956, 1956 PA 218, MCL 500.2301 to 500.2352.

14 (b) Amounts paid to the Michigan basic property insurance
15 association pursuant to chapter 29 of the insurance code of 1956,
16 1956 PA 218, MCL 500.2901 to 500.2954.

17 (c) Amounts paid to the Michigan automobile insurance
18 placement facility pursuant to chapter 33 of the insurance code of
19 1956, 1956 PA 218, MCL 500.3301 to 500.3390.

20 (d) Amounts paid to the property and casualty guaranty
21 association pursuant to chapter 79 of the insurance code of 1956,
22 1956 PA 218, MCL 500.7901 to 500.7949.

23 (e) Amounts paid to the Michigan life and health guaranty
24 association pursuant to chapter 77 of the insurance code of 1956,
25 1956 PA 218, MCL 500.7701 to 500.7780.

26 (2) For each tax year, the total credit provided in subsection
27 (1) for all insurance companies shall not exceed the product of the

1 remainder obtained by deducting the sum of the statutory amount
2 certified by the director of management and budget in 2007 pursuant
3 to section 22c(3) of former 1975 PA 228, plus the credits allowed
4 under section 53 from the total tax liability of domestic insurance
5 companies under this act but before applying any credits multiplied
6 by a fraction the numerator of which is the total assessments paid
7 by all insurance companies to the associations and facilities
8 described in subsection (1) and the denominator of which is the
9 total assessments paid by domestic insurance companies to the
10 associations and facilities described in subsection (1). The
11 statutory amount certified by the director of management and budget
12 in 2007 pursuant to section 22c(3) of former 1975 PA 228 subtrahend
13 shall be adjusted annually in proportion to the change in total
14 general fund/general purpose revenues for the immediately preceding
15 year, as certified by the director of management and budget.

16 (3) For each tax year, the credit for each insurance company
17 shall not exceed an amount equal to the product of the total credit
18 limitation calculated under subsection (2) multiplied by a fraction
19 the numerator of which is the insurance company's total assessments
20 paid to the associations and facilities described in subsection (1)
21 and the denominator of which is the total assessments paid by all
22 insurance companies to the associations and facilities described in
23 subsection (1).

24 (4) The tax liability and assessments of an insurance company
25 from the immediately preceding tax year shall be used in
26 calculating the credits allowed under this section for each tax
27 year.

1 (5) Not later than June 30 of each year after 2007, the state
2 treasurer shall certify the amounts needed to calculate the credits
3 allowed under this section for the insurance company tax year
4 ending in that calendar year.

5 Sec. 53. An insurance company shall be allowed a credit
6 against the tax imposed under this act in an amount equal to 50% of
7 the examination fees paid by the insurance company during the tax
8 year pursuant to section 224 of the insurance code of 1956, 1956 PA
9 218, MCL 500.224.

10 Sec. 54. (1) For amounts paid pursuant to section 352 of the
11 worker's disability compensation act of 1969, 1969 PA 317, MCL
12 418.352, an insurance company subject to the worker's disability
13 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, may
14 claim a credit against the tax imposed under this act for the tax
15 year in an amount equal to the amount paid during that tax year by
16 the insurance company pursuant to section 352 of the worker's
17 disability compensation act of 1969, 1969 PA 317, MCL 418.352, as
18 certified by the director of the bureau of worker's disability
19 compensation pursuant to section 391(6) of the worker's disability
20 compensation act of 1969, 1969 PA 317, MCL 418.391.

21 (2) An insurance company claiming a credit under this section
22 may claim a portion of the credit allowed under this section equal
23 to the payments made during a calendar quarter pursuant to section
24 352 of the worker's disability compensation act of 1969, 1969 PA
25 317, MCL 418.352, against the estimated tax payments made under
26 section 70. Any credit in excess of an estimated payment shall be
27 refunded to the insurance company on a quarterly basis within 60

1 calendar days after receipt of a properly completed estimated tax
2 return. Any subsequent increase or decrease in the amount claimed
3 for payments made by the insurance company shall be reflected in
4 the amount of the credit taken for the calendar quarter in which
5 the amount of the adjustment is finalized.

6 (3) The credit under this section is in addition to any other
7 credits the insurance company is eligible for under this act.

8 (4) Any amount of the credit under this section that is in
9 excess of the tax liability of the insurance company for the tax
10 year shall be refunded, without interest, by the department to the
11 insurance company within 60 calendar days of receipt of a properly
12 completed annual return required under this act.

13 Sec. 55. (1) An insurance company is subject to the tax under
14 this act or section 476a of the insurance code of 1956, 1956 PA
15 218, MCL 500.476a, if applicable, whichever is greater.

16 (2) An insurance company's tax year is the calendar year.

17 (3) An insurance company shall file the annual return required
18 under this act before the March 2 immediately succeeding the end of
19 the tax year.

20 (4) For the purpose of calculating an estimated payment
21 required under section 70, the greater of the amount of tax imposed
22 on an insurance company under this act or under section 476a of the
23 insurance code of 1956, 1956 PA 218, MCL 500.476a, shall be
24 considered the insurance company's tax liability for the
25 immediately preceding tax year.

26 (5) The requirements of section 28(1)(f) of 1941 PA 122, MCL
27 205.28, that prohibit an employee or authorized representative of,

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1 a former employee or authorized representative of, or anyone
2 connected with the department from divulging any facts or
3 information obtained in connection with the administration of a
4 tax, do not apply to disclosure of a tax return required under this
5 section.

CHAPTER 6

7 Sec. 60. As used in this chapter:

8 (a) "Depository financial institution" means any bank or bank
9 holding company incorporated or organized under federal law, laws
10 of this state, or laws of any other state or territory and any
11 subsidiaries or affiliates of that bank or bank holding company.

12 (b) "United States obligations" means all obligations of the
13 United States exempt from taxation under 31 USC 3124(a) or exempt
14 under the United States constitution or any federal statute,
15 including the obligations of any instrumentality or agency of the
16 United States that are exempt from state or local taxation under
17 the United States constitution or any statute of the United States.

18 (c) "Michigan obligations" means a bond, note, or other
19 obligation issued by a governmental unit described in section 3 of
20 the shared credit rating act, 1985 PA 227, MCL 141.1053.

21 Sec. 61. (1) Every depository financial institution with
22 business activity in this state and with nexus in this state as
23 determined under section 15 is subject to a franchise tax. The
24 franchise tax is imposed upon the tax base of the depository
25 financial institution as determined under section 62 after
26 allocation or apportionment to this state, at the rate of <<0.225%>>.

27 (2) The tax under this chapter is in lieu of the tax levied

1 and imposed under chapter 2 of this act and the business income tax
2 act.

3 Sec. 62. (1) For a depository financial institution, tax base
4 means the depository financial institution's net capital. Net
5 capital shall be determined by adding the value determined under
6 subsection (2) for the current tax year and preceding 4 calendar
7 years and dividing the resulting sum by 5. If a depository
8 financial institution has not been in existence for a period of 5
9 calendar years, net capital shall be determined by adding together
10 the values determined under subsection (2) for the number of
11 calendar years the depository financial institution has been in
12 existence and dividing the resulting sum by the number of years the
13 depository financial institution has been in existence. For
14 purposes of this section, a partial year shall be treated as a full
15 year.

16 (2) The value of net capital for each year for purposes of
17 subsection (1) shall be determined by making the following
18 adjustments:

19 (a) Adding together the book value of each of the following:

20 (i) Capital stock paid in.

21 (ii) Surplus.

22 (iii) Undivided profits and capital reserves.

23 (iv) Net unrealized holding gains or losses on available for
24 sale securities.

25 (v) Cumulative foreign currency translation adjustments.

26 (b) Deducting from the total determined under subdivision (a)
27 an amount equal to the same percentage of the total as the book

1 value of United States obligations and Michigan obligations bears
2 to the book value of the total assets of the depository financial
3 institution.

4 (3) For purposes of subsection (2), net capital shall include
5 equity related to investment in subsidiaries and, except as
6 otherwise provided in subsections (4) and (5), the foregoing book
7 values and deductions for United States obligations and Michigan
8 obligations for each year shall be determined by the reports of
9 condition for each quarter filed in accordance with the
10 requirements of the board of governors of the federal reserve
11 system, the comptroller of the currency, the federal deposit
12 insurance corporation, or other applicable regulatory authority.
13 Book values shall be calculated by averaging the quarterly book
14 values as determined by the reports of condition.

15 (4) For any year in which a depository financial institution
16 does not file 4 quarterly reports of condition, book values and
17 deductions for United States obligations and Michigan obligations
18 shall be determined by adding together the respective book values
19 and deductions for United States obligations and Michigan
20 obligations as determined by each quarterly report of condition
21 filed for the year and the respective book values and deductions
22 for United States obligations and Michigan obligations determined
23 in accordance with generally accepted accounting principles as of
24 the end of each of the remaining quarters and dividing the
25 resulting sums by 4.

26 (5) For any calendar year in which a depository financial
27 institution ceases to be in existence for 4 quarters, other than by

1 combination with another depository financial institution, the book
2 value for that year shall be determined by adding together the book
3 values and deductions for United States obligations and Michigan
4 obligations for each quarter in which the financial institution was
5 in existence and dividing the sums by 4.

6 (6) In the case of a depository financial institution which
7 does not file reports of condition, book values shall be determined
8 in accordance with generally accepted accounting principles.

9 (7) For purposes of this section, each of the following
10 applies:

11 (a) A change in identity, form, or place of organization of 1
12 depository financial institution shall be treated as if a single
13 depository financial institution had been in existence prior to as
14 well as after the change.

15 (b) The combination of 2 or more depository financial
16 institutions into 1 shall be treated as if the constituent
17 depository financial institutions had been a single depository
18 financial institution in existence prior to as well as after the
19 combination, and the book values and deductions for United States
20 obligations and Michigan obligations from the reports of condition
21 of the constituent institutions shall be combined. A combination
22 shall include any acquisition required to be accounted for by the
23 surviving depository financial institution under the pooling of
24 interest method in accordance with generally accepted accounting
25 principles or a statutory merger or consolidation.

26 (c) The combination of 1 or more depository financial
27 institutions and 1 or more savings and loan associations taxable

1 under laws of this state into a single depository financial
2 institution shall be treated for the taxable year in which the
3 combination occurred as if the single depository financial
4 institution had been in existence prior to as well as after the
5 combination, and the book values and deductions for United States
6 obligations and Michigan obligations from the reports of condition
7 of the depository financial institution and the reports to the
8 federal regulatory agency which are the equivalent of reports of
9 condition for a savings and loan association shall be combined. The
10 conversion of a savings and loan association taxable under the laws
11 of this state into a depository financial institution shall be
12 treated for the tax year in which the conversion occurred as if the
13 savings and loan association had been a depository financial
14 institution prior to as well as after the conversion, and the book
15 values and deductions for United States obligations and Michigan
16 obligations from the reports to the federal regulatory agency which
17 are the equivalent of reports of condition for a savings and loan
18 association shall be used. The savings and loan association shall
19 not be relieved of the responsibilities of filing and paying tax
20 under the laws of this state for tax years prior to the year of any
21 combination or conversion. Notwithstanding any other provision of
22 this chapter, the depository financial institution resulting from a
23 combination with or conversion of a savings and loan association
24 shall receive a credit on the franchise tax return equal to the
25 amount of tax paid under the laws of this state for the assessment
26 date occurring within the tax year during which the combination or
27 conversion takes place for franchise tax purposes.

1 (4) The interest provided by this act shall not be assessed if
2 any of the following occur:

3 (a) If the sum of the estimated payments equals at least 85%
4 of the liability and the amount of each estimated payment
5 reasonably approximates the tax liability incurred during the
6 quarter for which the estimated payment was made.

7 (b) If the preceding year's tax liability under this act was
8 \$20,000.00 or less and if the taxpayer submitted 4 equal
9 installments the sum of which equals the immediately preceding tax
10 year's tax liability.

11 (5) Each estimated return shall be made on a form prescribed
12 by the department and shall include an estimate of the annual tax
13 liability and other information required by the state treasurer.
14 The form prescribed under this subsection may be combined with any
15 other tax reporting form prescribed by the department.

16 (6) With respect to a taxpayer filing an estimated tax return
17 for the taxpayer's first tax year of less than 12 months, the
18 amounts paid with each return shall be proportional to the number
19 of payments made in the first tax year.

20 (7) Payments made under this section shall be a credit against
21 the payment required with the annual tax return required in section
22 72.

23 (8) If the department considers it necessary to insure payment
24 of the tax or to provide a more efficient administration of the
25 tax, the department may require filing of the returns and payment
26 of the tax for other than quarterly or annual periods.

27 (9) A taxpayer that elects under the internal revenue code to

1 file an annual federal income tax return by March 1 in the year
2 following the taxpayer's tax year and does not make a quarterly
3 estimate or payment, or does not make a quarterly estimate or
4 payment and files a tentative annual return with a tentative
5 payment by January 15 in the year following the taxpayer's tax year
6 and a final return by April 15 in the year following the taxpayer's
7 tax year, has the same option in filing the estimated and annual
8 returns required by this act.

9 Sec. 71. A taxpayer subject to this act may elect to compute
10 the tax imposed by this act for the first tax year if that tax year
11 is less than 12 months in accordance with 1 of the following
12 methods:

13 (a) The tax may be computed as if this act were effective on
14 the first day of the taxpayer's annual accounting period and the
15 amount computed shall be multiplied by a fraction, the numerator of
16 which is the number of months in the taxpayer's first tax year and
17 the denominator of which is 12.

18 (b) The tax may be computed by determining the tax base in the
19 first tax year in accordance with an accounting method satisfactory
20 to the department that reflects the actual tax base attributable to
21 the period.

22 Sec. 72. (1) An annual or final return shall be filed with the
23 department in the form and content prescribed by the department by
24 the last day of the fourth month after the end of the taxpayer's
25 tax year. Any final liability shall be remitted with this return.

26 (2) If a person has apportioned or allocated gross receipts
27 for a tax year of less than 12 months, the amount in subsection (1)

1 shall be multiplied by a fraction, the numerator of which is the
2 number of months in the tax year and the denominator of which is
3 12.

4 (3) The department, upon application of the taxpayer and for
5 good cause shown, may extend the date for filing the annual return.
6 Interest at the rate under section 23(2) of 1941 PA 122, MCL
7 205.23, shall be added to the amount of the tax unpaid for the
8 period of the extension. The treasurer shall require with the
9 application payment of the estimated tax liability unpaid for the
10 tax period covered by the extension.

11 (4) If a taxpayer is granted an extension of time within which
12 to file the federal income tax return for any tax year, the filing
13 of a copy of the request for extension together with a tentative
14 return and payment of an estimated tax with the department by the
15 due date provided in subsection (1) shall automatically extend the
16 due date for the filing of an annual or final return under this act
17 until the last day of the eighth month following the original due
18 date of the return. Interest at the rate under section 23(2) of
19 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
20 unpaid for the period of the extension.

21 (5) An affiliated group as defined in this act, a controlled
22 group of corporations as defined in section 1563 of the internal
23 revenue code and further described in 26 CFR 1.414(b)-1 and
24 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
25 defined in the internal revenue code shall consolidate the gross
26 receipts of the members of the affiliated group, member
27 corporations of the controlled group, or entities under common

1 control that have apportioned or allocated gross receipts, to
2 determine whether the group or entity shall pay a tax or file a
3 return as provided under subsection (1). An individual member of an
4 affiliated group or controlled group of corporations or an entity
5 under common control is not required to file a return or pay the
6 tax under this act if that member or entity has apportioned or
7 allocated gross receipts of less than \$100,000.00.

8 Sec. 73. (1) A taxpayer required to file a return under this
9 act may be required to furnish a true and correct copy of any
10 return or portion of any return filed under the provisions of the
11 internal revenue code.

12 (2) A taxpayer shall file an amended return with the
13 department showing any alteration in or modification of a federal
14 income tax return that affects its tax base under this act. The
15 amended return shall be filed within 120 days after the final
16 determination by the internal revenue service.

17 Sec. 74. (1) At the request of the department, a person
18 required by the internal revenue code to file or submit an
19 information return of income paid to others shall, to the extent
20 the information is applicable to residents of this state, at the
21 same time file or submit the information in the form and content
22 prescribed to the department.

23 (2) At the request of the department, a voluntary association,
24 joint venture, partnership, estate, or trust shall file a copy of
25 any tax return or portion of any tax return that was filed under
26 the provisions of the internal revenue code. The department may
27 prescribe alternate forms of returns.

1 Sec. 75. (1) Persons that are members of the same unitary
2 business group shall be treated as 1 taxpayer for purposes of any
3 original return; amended return that includes the same taxpayers of
4 the unitary business group which joined in filing the original
5 return, extension, claim for refund, assessment, collection, and
6 payment; and determination of the group's tax liability under this
7 act.

8 (2) A unitary business group shall file a single combined tax
9 return reporting the tax liability of all members of the group.

10 (3) The department may assess the entire amount of the tax and
11 all additional taxes, penalty, and interest computed on the basis
12 of the combined tax return against any 1 or more members of the
13 unitary business group.

14 (4) The sales factor for a unitary business member is a
15 fraction, the numerator of which is the total sales of the unitary
16 business member in this state during the tax year and the
17 denominator of which is the total sales of the unitary business
18 group everywhere during the tax year. In the case of a unitary
19 business group composed exclusively of taxpayers using the special
20 apportionment factors under section 47, 48, or 49 of this act, the
21 unitary business member's tax base shall be apportioned by a
22 fraction, the numerator of which is the special factor of the
23 unitary business member in this state during the tax year and the
24 denominator of which is the special factor of the unitary business
25 group everywhere during the tax year. Sales between members of the
26 unitary business group must be eliminated in calculating the sales
27 factor or the special factor.

1 (5) In no event, however, will any unitary business group
2 include members that are subject to apportionment by different
3 apportionment factors.

4 (6) As used in this section:

5 (a) "Unitary business group" means a group of persons related
6 through common ownership whose business activities are integrated
7 with, are dependent upon, and contribute to each other. A unitary
8 business group does not include a member whose business activity
9 outside the United States is 80% or more of that member's total
10 business activity. For purposes of this subdivision, business
11 activity within the United States is measured by the sales factor
12 ordinarily applicable under section 12 and chapter 4. The
13 computation required by the preceding sentence shall, in each case,
14 involve the division of the member's sales in the United States or
15 insurance premiums on property or risk in the United States, as the
16 case may be, by the respective worldwide figures for such items.
17 Common ownership of a unitary business group shall be determined as
18 follows:

19 (i) Common ownership in the case of a corporation or subchapter
20 S corporation is the direct or indirect control or ownership of
21 more than 50% of the outstanding stock by vote and value and the
22 direct or indirect control or ownership of more than 50% of the
23 outstanding value of stock of the persons carrying on unitary
24 business activity.

25 (ii) Common ownership in the case of partnerships is the direct
26 or indirect ownership or control of more than 50% of the
27 partnership interests of the partnerships carrying on unitary

1 business activity.

2 (b) "Unitary business member" means a person that is a member
3 of a unitary business group.

4 (c) "United States" means only the 50 states and the District
5 of Columbia, but does not include any territory or possession of
6 the United States or any area over which the United States has
7 asserted jurisdiction or claimed exclusive rights with respect to
8 the exploration for or exploitation of natural resources.

9 (7) For purposes of this section:

10 (a) An individual is considered the owner of the stock or the
11 owner of partnership interests owned, directly or indirectly, by or
12 for family members as defined by section 318(a)(1) of the internal
13 revenue code.

14 (b) Unitary business activity can ordinarily be illustrated if
15 the activities of the members are any of the following:

16 (i) In the same general line, such as manufacturing,
17 wholesaling, retailing of tangible personal property, insurance,
18 transportation, or finance.

19 (ii) Steps in a vertically structured enterprise or process,
20 such as the steps involved in the production of natural resources,
21 which might include exploration, mining, refining, and marketing.

22 (iii) Functionally integrated through the exercise of strong
23 centralized management, including, but not limited to, authority
24 over such matters as purchasing, financing, tax compliance, product
25 line, personnel, marketing, and capital investment.

26 Sec. 76. (1) A group of 2 or more persons may elect to be a
27 consolidated taxpayer group for the purposes of this act if the

1 group satisfies all of the following requirements:

2 (a) The group elects to include all persons having at least
3 50% of the vote, if applicable, and value of their ownership
4 interests owned or controlled, directly or constructively through
5 related interests, by common owners during all or any portion of
6 the tax period, together with the common owners. At the election of
7 the group, entities that are not incorporated or formed under the
8 laws of a state or of the United States and that meet the elected
9 ownership test shall either be included in the group or excluded
10 from the group. The group shall notify the department of the
11 foregoing elections before the due date of the return in which the
12 election is to become effective. If 50% of the vote, if applicable,
13 and value of a person's ownership interests is owned or controlled
14 by each of 2 consolidated taxpayer groups formed under the 50%
15 ownership or control test, that person is a member of each group
16 for the purposes of this section, and each group shall include in
17 the group's taxable receipts 50% of that person's taxable receipts.
18 Otherwise, all of that person's taxable receipts shall be included
19 in the tax base of the consolidated taxpayer group of which the
20 person is a member. In no event shall the ownership or control of
21 50% of the vote, if applicable, and value of a person's ownership
22 interests by 2 otherwise unrelated groups form the basis for
23 consolidating the groups into a single consolidated taxpayer group
24 or permit any exclusion under subsection (3) of taxable receipts
25 between members of the 2 groups. Subdivision (c) applies with
26 respect to the elections described in this subdivision.

27 (b) The group makes the election to be treated as a

1 consolidated taxpayer group in the manner prescribed under
2 subsection (4).

3 (c) No member of the group is subject to the tax imposed under
4 section 50.

5 (d) Subject to review and audit by the department, the group
6 agrees that all of the following apply:

7 (i) The group shall file reports as a single taxpayer for at
8 least the next 5 years following the election so long as at least 2
9 or more of the members of the group meet the requirements of
10 subdivision (a).

11 (ii) Before the expiration of the fifth taxable year, the group
12 shall notify the department if it elects to cancel its designation
13 as a consolidated taxpayer group. If the group does not notify the
14 department, the election shall remain in effect for another 5
15 years.

16 (iii) If at any time during any of those 5 years following the
17 election, a former member of the group no longer meets the
18 requirements under subdivision (a), that member shall report and
19 pay the tax imposed under this act separately, as a member of a
20 unitary business group, or if the former member satisfies those
21 requirements, with respect to another consolidated taxpayer group,
22 as a member of that consolidated taxpayer group.

23 (iv) The group agrees to the application of subsection (2).

24 (2) A consolidated taxpayer group shall exclude taxable
25 receipts between its members. Nothing in this section shall have
26 the effect of excluding receipts received from persons that are not
27 members of the group.

1 (3) To make the election to be a consolidated taxpayer group,
2 a group of persons shall notify the department of the election in
3 the manner prescribed by the department. The election shall be made
4 before the later of the beginning of the first calendar quarter to
5 which the election applies or June 15, 2008. The election shall be
6 made on a form prescribed by the department for that purpose and
7 shall be signed by 1 or more individuals with authority, separately
8 or together, to make a binding election on behalf of all persons in
9 the group. Any person acquired or formed after the filing of the
10 election shall be included in the group if the person meets the
11 requirements of subsection (1)(a), and the group shall notify the
12 department of any additions to the group with the next tax return
13 it files with the department.

14 (4) Each member of a consolidated taxpayer group is jointly
15 and severally liable for the tax imposed by this act and any
16 penalties or interest thereon. The department may require 1 person
17 in the group to be the taxpayer for purposes of registration and
18 remittance of the tax, but all members of the group are subject to
19 assessment under this act.

20 (5) The sales factor for a consolidated member is calculated
21 under section 43(1) excluding sales between consolidated members.
22 The factors of each consolidated member are added together to total
23 1 sales factor for the consolidated taxpayer group. The allocation
24 of sales to determine the numerator of the sales factor is made as
25 though each corporation is filing a separate return.

26 (6) As used in this section:

27 (a) "Consolidated member" means each person within a

1 consolidated taxpayer group.

2 (b) "Consolidated taxpayer group" means a group of 2 or more
3 persons treated as a single taxpayer for purposes of this act as
4 the result of an election made under this section.

5 Sec. 77. (1) The tax imposed by this act shall be administered
6 by the department of treasury pursuant to 1941 PA 122, MCL 205.1 to
7 205.31, and this act. If a conflict exists between 1941 PA 122, MCL
8 205.1 to 205.31, and this act, the provisions of this act apply.

9 (2) The department may promulgate rules to implement this act
10 pursuant to the administrative procedures act of 1969, 1969 PA 306,
11 MCL 24.201 to 24.328.

12 (3) The department shall prescribe forms for use by taxpayers
13 and may promulgate rules in conformity with this act for the
14 maintenance by taxpayers of records, books, and accounts, and for
15 the computation of the tax, the manner and time of changing or
16 electing accounting methods and of exercising the various options
17 contained in this act, the making of returns, and the
18 ascertainment, assessment, and collection of the tax imposed under
19 this act.

20 (4) The tax imposed by this act is in addition to all other
21 taxes for which the taxpayer may be liable.

22 (5) The department shall prepare and publish statistics from
23 the records kept to administer the tax imposed by this act that
24 detail the distribution of tax receipts by type of business, legal
25 form of organization, sources of tax base, timing of tax receipts,
26 and types of deductions. The statistics shall not result in the
27 disclosure of information regarding any specific taxpayer.

1 Sec. 78. The proceeds of the tax collected under this act
2 shall be deposited in the general fund.

3 Sec. 91. This act is repealed effective January 1, 2018.

4 Enacting section 1. This act takes effect January 1, 2008.

5 Enacting section 2. This act does not take effect unless all
6 of the following bills of the 94th Legislature are enacted into
7 law:

8 (a) Senate Bill No. 95.

9 (b) Senate Bill No. 96.