

HOUSE BILL No. 5939

April 8, 2008, Introduced by Reps. Robert Jones, Bieda and Condino and referred to the Committee on Tax Policy.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

26 (3) To be eligible for the credit under this section, the
27 taxpayer shall apply to and receive from the Michigan historical

1 center certification that the historic significance, the
2 rehabilitation plan, and the completed rehabilitation of the
3 historic resource meet the criteria under subsection (6) and either
4 of the following:

5 (a) All of the following criteria:

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

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

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

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

21 (4) If a qualified taxpayer is eligible for the credit allowed
22 under section 47(a)(2) of the internal revenue code, the qualified
23 taxpayer shall file for certification with the center to qualify
24 for the credit allowed under section 47(a)(2) of the internal
25 revenue code. If the qualified taxpayer has previously filed for
26 certification with the center to qualify for the credit allowed
27 under section 47(a)(2) of the internal revenue code, additional

1 filing for the credit allowed under this section is not required.

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

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

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

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

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

21 (iii) A contributing resource located within an historic
22 district designated by a local unit pursuant to an ordinance
23 adopted under the local historic districts act, 1970 PA 169, MCL
24 399.201 to 399.215.

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

1 (i) The historic resource is located in a designated historic
2 district in a local unit of government with an existing ordinance
3 under the local historic districts act, 1970 PA 169, MCL 399.201 to
4 399.215.

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

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

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

16 (7) If a qualified taxpayer is a partnership, limited
17 liability company, or subchapter S corporation, the qualified
18 taxpayer may assign all or any portion of a credit allowed under
19 this section to its partners, members, or shareholders, based on
20 the partner's, member's, or shareholder's proportionate share of
21 ownership or based on an alternative method approved by the
22 department. A credit assignment under this subsection is
23 irrevocable and shall be made in the tax year in which a
24 certificate of completed rehabilitation is issued. A qualified
25 taxpayer may claim a portion of a credit and assign the remaining
26 credit amount. A partner, member, or shareholder that is an
27 assignee shall not subsequently assign a credit or any portion of a

1 credit assigned to the partner, member, or shareholder under this
2 subsection. A credit amount assigned under this subsection may be
3 claimed against the partner's, member's, or shareholder's tax
4 liability under this act or under the income tax act of 1967, 1967
5 PA 281, MCL 206.1 to 206.532. A credit assignment under this
6 subsection shall be made on a form prescribed by the department.
7 The qualified taxpayer and assignees shall send a copy of the
8 completed assignment form to the department in the tax year in
9 which the assignment is made and attach a copy of the completed
10 assignment form to the annual return required to be filed under
11 this act for that tax year.

12 (8) If the credit allowed under this section for the tax year
13 and any unused carryforward of the credit allowed by this section
14 exceed the taxpayer's tax liability for the tax year, that portion
15 that exceeds the tax liability for the tax year shall not be
16 refunded but may be **USED TO OFFSET ANY TAX LIABILITY ADDED BACK**
17 **PURSUANT TO SUBSECTIONS (9) AND (10) FOR THE CURRENT TAX YEAR OR**
18 **MAY BE** carried forward to offset tax liability in subsequent tax
19 years for 10 years or until used up, whichever occurs first. An
20 unused carryforward of a credit under section 39c of former 1975 PA
21 228 that was unused at the end of the last tax year for which
22 former 1975 PA 228 was in effect may be claimed against the tax
23 imposed under this act for the years the carryforward would have
24 been available under section 39c of former 1975 PA 228.

25 (9) If the taxpayer sells an historic resource for which a
26 credit was claimed under this section or under section 39c of
27 former 1975 PA 228 less than 5 years after the year in which the

1 credit was claimed, the following percentage of the credit amount
2 previously claimed relative to that historic resource shall be
3 added back to the tax liability of the taxpayer in the year of the
4 sale:

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

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

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

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

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

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

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

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

27 (b) If the revocation is at least 1 year but less than 2 years

1 after the year in which the credit was claimed, 80%.

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

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

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

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

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

14 (12) The qualified taxpayer shall attach all of the following
15 to the qualified taxpayer's annual return required under this act
16 or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to
17 206.532, if applicable, on which the credit is claimed:

18 (a) Certification of completed rehabilitation.

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

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

26 (13) The department of history, arts, and libraries shall
27 promulgate rules to implement this section pursuant to the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328.

3 (14) The total of the credits claimed under this section and
4 section 266 of the income tax act of 1967, 1967 PA 281, MCL
5 206.266, for a rehabilitation project shall not exceed 25% of the
6 total qualified expenditures eligible for the credit under this
7 section for that rehabilitation project.

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

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

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

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

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

19 (17) As used in this section:

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

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

27 (c) "Historic resource" means a publicly or privately owned

1 historic building, structure, site, object, feature, or open space
2 located within an historic district designated by the national
3 register of historic places, the state register of historic sites,
4 or a local unit acting under the local historic districts act, 1970
5 PA 169, MCL 399.201 to 399.215, or that is individually listed on
6 the state register of historic sites or national register of
7 historic places, and includes all of the following:

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

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

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

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

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

22 (d) "Last tax year" means the taxpayer's tax year under former
23 1975 PA 228 that begins after December 31, 2006 and before January
24 1, 2008.

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

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

1 nonresidential resource.

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

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

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

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

1 (k) "Qualified taxpayer" means a person that is an assignee
2 under subsection (7) or either owns the resource to be
3 rehabilitated or has a long-term lease agreement with the owner of
4 the historic resource and that has qualified expenditures for the
5 rehabilitation of the historic resource equal to or greater than
6 10% of the state equalized valuation of the property. If the
7 historic resource to be rehabilitated is a portion of an historic
8 or nonhistoric resource, the state equalized valuation of only that
9 portion of the property shall be used for purposes of this
10 subdivision. If the assessor for the local tax collecting unit in
11 which the historic resource is located determines the state
12 equalized valuation of that portion, that assessor's determination
13 shall be used for purposes of this subdivision. If the assessor
14 does not determine that state equalized valuation of that portion,
15 qualified expenditures, for purposes of this subdivision, shall be
16 equal to or greater than 5% of the appraised value as determined by
17 a certified appraiser. If the historic resource to be rehabilitated
18 does not have a state equalized valuation, qualified expenditures
19 for purposes of this subdivision shall be equal to or greater than
20 5% of the appraised value of the resource as determined by a
21 certified appraiser.

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