

SUBSTITUTE FOR

SENATE BILL NO. 838

(As amended October 8, 2009)

<<A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 111, 281, 417, 437, 441, 455, 457, and 515
(MCL 208.1111, 208.1281, 208.1417, 208.1437, 208.1441, 208.1455,
208.1457, and 208.1515), section 111 as amended by 2008 PA 433,
section 281 as added and section 515 as amended by 2007 PA 145,
section 437 as amended by 2008 PA 578, section 455 as added by 2008 PA
77, and section 457 as added by 2008 PA 86.>>

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 111. (1) "Gross receipts" means the entire amount
2 received by the taxpayer as determined by using the taxpayer's
3 method of accounting used for federal income tax purposes, less any

1 amount deducted as bad debt for federal income tax purposes that
2 corresponds to items of gross receipts included in the modified
3 gross receipts tax base for the current tax year or a past tax year
4 phased in over a 5-year period starting with 50% of that amount in
5 the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax
6 year, 75% in the 2011 tax year, and 100% in the 2012 tax year and
7 each tax year thereafter, from any activity whether in intrastate,
8 interstate, or foreign commerce carried on for direct or indirect
9 gain, benefit, or advantage to the taxpayer or to others except for
10 the following:

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

14 (b) Amounts received by the taxpayer as an agent solely on
15 behalf of the principal that are expended by the taxpayer for any
16 of the following:

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

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

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

27 (iv) A capital asset of a type that is, or under the internal

1 revenue code will become, eligible for depreciation, amortization,
2 or accelerated cost recovery by the principal for federal income
3 tax purposes, or for real property owned or leased by the
4 principal.

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

9 (vi) Fees, taxes, assessments, levies, fines, penalties, or
10 other payments established by law that are paid to a governmental
11 entity and that are the legal obligation of the principal.

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

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

18 (e) Amounts received by a newspaper to acquire advertising
19 space not owned by that newspaper in another newspaper on behalf of
20 another person. This subdivision does not apply to any
21 consideration received by the taxpayer for acquiring that
22 advertising space.

23 (f) Notwithstanding any other provision of this section,
24 amounts received by a taxpayer that manages real property owned by
25 a third party that are deposited into a separate account kept in
26 the name of that third party and that are not reimbursements to the
27 taxpayer and are not indirect payments for management services that

1 the taxpayer provides to that third party.

2 (g) Proceeds from the taxpayer's transfer of an account
3 receivable if the sale that generated the account receivable was
4 included in gross receipts for federal income tax purposes. This
5 subdivision does not apply to a taxpayer that during the tax year
6 both buys and sells any receivables.

7 (h) Proceeds from any of the following:

8 (i) The original issue of stock or equity instruments or equity
9 issued by a regulated investment company as that term is defined
10 under section 851 of the internal revenue code.

11 (ii) The original issue of debt instruments.

12 (i) Refunds from returned merchandise.

13 (j) Cash and in-kind discounts.

14 (k) Trade discounts.

15 (l) Federal, state, or local tax refunds.

16 (m) Security deposits.

17 (n) Payment of the principal portion of loans.

18 (o) Value of property received in a like-kind exchange.

19 (p) Proceeds from a sale, transaction, exchange, involuntary
20 conversion, maturity, redemption, repurchase, recapitalization, or
21 other disposition or reorganization of tangible, intangible, or
22 real property, less any gain from the disposition or reorganization
23 to the extent that the gain is included in the taxpayer's federal
24 taxable income, if the property satisfies 1 or more of the
25 following:

26 (i) The property is a capital asset as defined in section
27 1221(a) of the internal revenue code.

1 (ii) The property is land that qualifies as property used in
2 the trade or business as defined in section 1231(b) of the internal
3 revenue code.

4 (iii) The property is used in a hedging transaction entered into
5 by the taxpayer in the normal course of the taxpayer's trade or
6 business primarily to manage the risk of exposure to foreign
7 currency fluctuations that affect assets, liabilities, profits,
8 losses, equity, or investments in foreign operations; interest rate
9 fluctuations; or commodity price fluctuations. For purposes of this
10 subparagraph, the actual transfer of title of real or tangible
11 personal property to another person is not a hedging transaction.
12 Only the overall net gain from the hedging transactions entered
13 into during the tax year is included in gross receipts. As used in
14 this subparagraph, "hedging transaction" means that term as defined
15 under section 1221 of the internal revenue code regardless of
16 whether the transaction was identified by the taxpayer as a hedge
17 for federal income tax purposes, provided, however, that
18 transactions excluded under this subparagraph and not identified as
19 a hedge for federal income tax purposes shall be identifiable to
20 the department by the taxpayer as a hedge in its books and records.

21 (iv) The property is investment and trading assets managed as
22 part of the person's treasury function. For purposes of this
23 subparagraph, a person principally engaged in the trade or business
24 of purchasing and selling investment and trading assets is not
25 performing a treasury function. Only the overall net gain from the
26 treasury function incurred during the tax year is included in gross
27 receipts. As used in this subparagraph, "treasury function" means

1 the pooling and management of investment and trading assets for the
2 purpose of satisfying the cash flow or liquidity needs of the
3 taxpayer's trade or business.

4 (q) The proceeds from a policy of insurance, a settlement of a
5 claim, or a judgment in a civil action less any proceeds under this
6 subdivision that are included in federal taxable income.

7 (r) For a sales finance company, as defined in section 2 of
8 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
9 492.102, and directly or indirectly owned in whole or in part by a
10 motor vehicle manufacturer as of January 1, 2008, and for a person
11 that is a broker or dealer as defined under section 78c(a)(4) or
12 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
13 included in the unitary business group of that broker or dealer
14 that buys and sells for its own account, contracts that are subject
15 to the commodity exchange act, 7 USC 1 to 27f, amounts realized
16 from the repayment, maturity, sale, or redemption of the principal
17 of a loan, bond, or mutual fund, certificate of deposit, or similar
18 marketable instrument provided such instruments are not held as
19 inventory.

20 (s) For a sales finance company, as defined in section 2 of
21 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
22 492.102, and directly or indirectly owned in whole or in part by a
23 motor vehicle manufacturer as of January 1, 2008, and for a person
24 that is a broker or dealer as defined under section 78c(a)(4) or
25 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
26 included in the unitary business group of that broker or dealer
27 that buys and sells for its own account, contracts that are subject

1 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
2 received under a repurchase agreement or other transaction properly
3 characterized as a loan.

4 (t) For a mortgage company, proceeds representing the
5 principal balance of loans transferred or sold in the tax year. For
6 purposes of this subdivision, "mortgage company" means a person
7 that is licensed under the mortgage brokers, lenders, and servicers
8 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the
9 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and
10 has greater than 90% of its revenues, in the ordinary course of
11 business, from the origination, sale, or servicing of residential
12 mortgage loans.

13 (u) For a professional employer organization, any amount
14 charged by a professional employer organization that represents the
15 actual cost of wages and salaries, benefits, worker's compensation,
16 payroll taxes, withholding, or other assessments paid to or on
17 behalf of a covered employee by the professional employer
18 organization under a professional employer arrangement.

19 (v) Any invoiced items used to provide more favorable floor
20 plan assistance to a person subject to the tax imposed under this
21 act than to a person not subject to this tax and paid by a
22 manufacturer, distributor, or supplier.

23 (w) For an individual, estate, or other person organized for
24 estate or gift planning purposes, amounts received other than those
25 from transactions, activities, and sources in the regular course of
26 the taxpayer's trade or business. For purposes of this subdivision,
27 all of the following apply:

1 (i) Amounts received from transactions, activities, and sources
2 in the regular course of the taxpayer's business include, but are
3 not limited to, the following:

4 (A) Receipts from tangible and intangible property if the
5 acquisition, rental, lease, management, or disposition of the
6 property constitutes integral parts of the taxpayer's regular trade
7 or business operations.

8 (B) Receipts received in the course of the taxpayer's trade or
9 business from stock and securities of any foreign or domestic
10 corporation and dividend and interest income.

11 (C) Receipts derived from isolated sales, leases, assignments,
12 licenses, divisions, or other infrequently occurring dispositions,
13 transfers, or transactions involving tangible, intangible, or real
14 property if the property is or was used in the taxpayer's trade or
15 business operation.

16 (D) Receipts derived from the sale of an interest in a
17 business that constitutes an integral part of the taxpayer's
18 regular trade or business.

19 (E) Receipts derived from the lease or rental of real
20 property.

21 (ii) Receipts excluded from gross receipts include, but are not
22 limited to, the following:

23 (A) Receipts derived from investment activity, including
24 interest, dividends, royalties, and gains from an investment
25 portfolio or retirement account, if the investment activity is not
26 part of the taxpayer's trade or business.

27 (B) Receipts derived from the disposition of tangible,

1 intangible, or real property held for personal use and enjoyment,
2 such as a personal residence or personal assets.

3 (x) Receipts derived from investment activity by a person that
4 is organized exclusively to conduct investment activity and that
5 does not conduct investment activity for any person other than an
6 individual or a person related to that individual or by a common
7 trust fund established under the collective investment funds act,
8 1941 PA 174, MCL 555.101 to 555.113. For purposes of this
9 subdivision, a person is related to an individual if that person is
10 a spouse, brother or sister, whether of the whole or half blood or
11 by adoption, ancestor, lineal descendent of that individual or
12 related person, or a trust benefiting that individual or 1 or more
13 persons related to that individual.

14 (y) Interest income and dividends derived from obligations or
15 securities of the United States government, this state, or any
16 governmental unit of this state. As used in this subdivision,
17 "governmental unit" means that term as defined in section 3 of the
18 shared credit rating act, 1985 PA 227, MCL 141.1053.

19 (z) Dividends and royalties received or deemed received from a
20 foreign operating entity or a person other than a United States
21 person, including, but not limited to, the amounts determined under
22 section 78 of the internal revenue code and sections 951 to 964 of
23 the internal revenue code, phased in over a 5-year period starting
24 with 50% of that amount in the 2008 tax year, 60% in the 2009 tax
25 year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100%
26 in the 2012 tax year and each tax year thereafter.

27 (aa) To the extent not deducted as purchases from other firms

1 under section 203, each of the following:

2 (i) Sales or use taxes collected from or reimbursed by a
3 consumer or other taxes the taxpayer collected directly from or was
4 reimbursed by a purchaser and remitted to a local, state, or
5 federal tax authority, phased in over a 5-year period starting with
6 50% of that amount in the 2008 tax year, 60% in the 2009 tax year,
7 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the
8 2012 tax year and each tax year thereafter.

9 (ii) In the case of receipts from the sale of cigarettes or
10 tobacco products by a wholesale dealer, retail dealer, distributor,
11 manufacturer, or seller, an amount equal to the federal and state
12 excise taxes paid by any person on or for such cigarettes or
13 tobacco products under subtitle E of the internal revenue code or
14 other applicable state law. ~~, phased in over a 3-year period~~
15 ~~starting with 60% of that amount in the 2008 tax year, 75% in the~~
16 ~~2009 tax year, and 100% in the 2010 tax year and each tax year~~
17 ~~thereafter.~~

18 (iii) In the case of receipts from the sale of motor fuel by a
19 person with a motor fuel tax license or a retail dealer, an amount
20 equal to federal and state excise taxes paid by any person on such
21 motor fuel under section 4081 of the internal revenue code or under
22 other applicable state law, phased in over a 5-year period starting
23 with 50% of that amount in the 2008 tax year, 60% in the 2009 tax
24 year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100%
25 in the 2012 tax year and each tax year thereafter.

26 (iv) In the case of receipts from the sale of beer, wine, or
27 intoxicating liquor by a person holding a license to sell,

1 distribute, or produce those products, an amount equal to federal
2 and state excise taxes paid by any person on or for such beer,
3 wine, or intoxicating liquor under subtitle E of the internal
4 revenue code or other applicable state law, phased in over a 5-year
5 period starting with 50% of that amount in the 2008 tax year, 60%
6 in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax
7 year, and 100% in the 2012 tax year and each tax year thereafter.

8 (v) In the case of receipts from the sale of communication,
9 video, internet access and related services and equipment, any
10 government imposed tax, fee, or other imposition in the nature of a
11 tax or fee required by law, ordinance, regulation, ruling, or other
12 legal authority and authorized to be charged on a customer's bill
13 or invoice, phased in over a 5-year period starting with 50% of
14 that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in
15 the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012
16 tax year and each tax year thereafter. This subparagraph does not
17 include the recovery of net income taxes, net worth taxes, property
18 taxes, or the tax imposed under this act.

19 (vi) In the case of receipts from the sale of electricity,
20 natural gas, or other energy source, any government imposed tax,
21 fee, or other imposition in the nature of a tax or fee required by
22 law, ordinance, regulation, ruling, or other legal authority and
23 authorized to be charged on a customer's bill or invoice, phased in
24 over a 5-year period starting with 50% of that amount in the 2008
25 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75%
26 in the 2011 tax year, and 100% in the 2012 tax year and each tax
27 year thereafter. This subparagraph does not include the recovery of

1 net income taxes, net worth taxes, property taxes, or the tax
2 imposed under this act.

3 (vii) Any deposit required under any of the following, phased
4 in over a 5-year period starting with 50% of that amount in the
5 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year,
6 75% in the 2011 tax year, and 100% in the 2012 tax year and each
7 tax year thereafter:

8 (A) 1976 IL 1, MCL 445.571 to 445.576.

9 (B) R 436.1629 of the Michigan administrative code.

10 (C) R 436.1723a of the Michigan administrative code.

11 (D) Any substantially similar beverage container deposit law
12 of another state.

13 (viii) An excise tax collected pursuant to the airport parking
14 tax act, 1987 PA 248, MCL 207.371 to 207.383, collected from or
15 reimbursed by a consumer and remitted as provided in the airport
16 parking tax act, 1987 PA 248, MCL 207.371 to 207.383, phased in
17 over a 5-year period starting with 50% of that amount in the 2008
18 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75%
19 in the 2011 tax year, and 100% in the 2012 tax year and each tax
20 year thereafter.

21 (bb) Amounts attributable to an ownership interest in a pass-
22 through entity, regulated investment company, real estate
23 investment trust, or cooperative corporation whose business
24 activities are taxable under section 203 or would be subject to the
25 tax under section 203 if the business activities were in this
26 state. For purposes of this subdivision:

27 (i) "Cooperative corporation" means those organizations

1 described under subchapter T of the internal revenue code.

2 (ii) "Pass-through" entity means a partnership, subchapter S
3 corporation, or other person, other than an individual, that is not
4 classified for federal income tax purposes as an association taxed
5 as a corporation.

6 (iii) "Real estate investment trust" means that term as defined
7 under section 856 of the internal revenue code.

8 (iv) "Regulated investment company" means that term as defined
9 under section 851 of the internal revenue code.

10 (cc) For a regulated investment company as that term is
11 defined under section 851 of the internal revenue code, receipts
12 derived from investment activity by that regulated investment
13 company.

14 (dd) For fiscal years that begin after September 30, 2009,
15 unless the state budget director certifies to the state treasurer
16 by January 1 of that fiscal year that the federally certified rates
17 for actuarial soundness required under 42 CFR 438.6 and that are
18 specifically developed for Michigan's health maintenance
19 organizations that hold a contract with this state for medicaid
20 services provide explicit adjustment for their obligations required
21 for payment of the tax under this act, amounts received by the
22 taxpayer during that fiscal year for medicaid premium or
23 reimbursement of costs associated with service provided to a
24 medicaid recipient or beneficiary.

25 (2) "Insurance company" means an authorized insurer as defined
26 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
27 500.106.

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

4 (4) "Inventory" means, except as provided in subdivision (e),
5 all of the following:

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

9 (b) Finished goods, goods in process, and raw materials of a
10 manufacturing business purchased from another person.

11 (c) For a person that is a new motor vehicle dealer licensed
12 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923,
13 floor plan interest expenses for new motor vehicles. For purposes
14 of this subdivision, "floor plan interest" means interest paid that
15 finances any part of the person's purchase of new motor vehicle
16 inventory from a manufacturer, distributor, or supplier. However,
17 amounts attributable to any invoiced items used to provide more
18 favorable floor plan assistance to a person subject to the tax
19 imposed under this act than to a person not subject to this tax is
20 considered interest paid by a manufacturer, distributor, or
21 supplier.

22 (d) For a person that is a securities trader, broker, or
23 dealer or a person included in the unitary business group of that
24 securities trader, broker, or dealer that buys and sells for its
25 own account, contracts that are subject to the commodity exchange
26 act, 7 USC 1 to 27f, the cost of securities as defined under
27 section 475(c)(2) of the internal revenue code and for a securities

1 trader the cost of commodities as defined under section 475(e)(2)
2 and for a broker or dealer the cost of commodities as defined under
3 section 475(e)(2)(b), (c), and (d) of the internal revenue code,
4 excluding interest expense other than interest expense related to
5 repurchase agreements. As used in this subdivision:

6 (i) "Broker" means that term as defined under section 78c(a)(4)
7 of the securities exchange act of 1934, 15 USC 78c.

8 (ii) "Dealer" means that term as defined under section
9 78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.

10 (iii) "Securities trader" means a person that engages in the
11 trade or business of purchasing and selling investments and trading
12 assets.

13 (e) Inventory does not include either of the following:

14 (i) Personal property under lease or principally intended for
15 lease rather than sale.

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

18 (5) "Officer" means an officer of a corporation other than a
19 subchapter S corporation, including all of the following:

20 (a) The chairperson of the board.

21 (b) The president, vice president, secretary, or treasurer of
22 the corporation or board.

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

25 Sec. 281. (1) In addition to the taxes imposed and levied
26 under this act and subject to subsections (2) ~~7-AND (3), and (4),~~
27 to meet deficiencies in state funds an annual surcharge is imposed

1 and levied on each taxpayer equal to the following percentage of
2 the taxpayer's tax liability under this act after allocation or
3 apportionment to this state under this act but before calculation
4 of the various credits available under this act:

5 (a) For each taxpayer other than a person subject to the tax
6 imposed and levied under chapter 2B: —

7 (i) **FOR TAX YEARS ENDING AFTER DECEMBER 31, 2007 AND BEFORE**
8 **OCTOBER 1, 2009, 21.99%.**

9 (ii) **ON AND AFTER OCTOBER 1, 2009 AND BEFORE JANUARY 1, 2011,**
10 **14.66%.**

11 (iii) **FOR TAX YEARS ENDING AFTER DECEMBER 31, 2010 AND BEFORE**
12 **JANUARY 1, 2012, 7.33%.**

13 (b) For a person subject to the tax imposed and levied under
14 chapter 2B:

15 (i) For tax years ending after December 31, 2007 and before
16 January 1, 2009, 27.7%.

17 (ii) For tax years ending after December 31, 2008 **AND BEFORE**
18 **OCTOBER 1, 2009, 23.4%.**

19 (iii) **ON AND AFTER OCTOBER 1, 2009 AND BEFORE JANUARY 1, 2011,**
20 **15.6%.**

21 (iv) **FOR TAX YEARS ENDING AFTER DECEMBER 31, 2010 AND BEFORE**
22 **JANUARY 1, 2012, 7.8%.**

23 ~~—— (2) If the Michigan personal income growth exceeds 0% in any 1~~
24 ~~of the 3 calendar years immediately preceding the 2017 calendar~~
25 ~~year, then the surcharge under subsection (1) shall not be levied~~
26 ~~and imposed on or after January 1, 2017. For purposes of this~~
27 ~~subsection, "Michigan personal income" means personal income for~~

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~~this state as defined by the bureau of economic analysis of the
United States department of commerce or its successor.~~

(2) ~~(3)~~—The amount of the surcharge imposed and levied on any
taxpayer under subsection (1)(a) shall not exceed **THE FOLLOWING:**

(A) \$6,000,000.00 for ~~any single~~ **THE 2008** tax year.

(B) \$5,500,000.00 **FOR THE 2009 TAX YEAR.**

(C) \$4,000,000.00 **FOR THE 2010 TAX YEAR.**

(D) \$2,000,000.00 **FOR THE 2011 TAX YEAR.**

(3) ~~(4)~~—The surcharge imposed and levied under this section
does not apply to either of the following:

(a) A person subject to the tax imposed and levied under
chapter 2A.

(b) A person subject to the tax imposed and levied under
chapter 2B that is authorized to exercise only trust powers.

(4) ~~(5)~~—The surcharge imposed and levied under this section
shall constitute a part of the tax imposed under this act and shall
be administered, collected, and enforced as provided under this
act.

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Senate Bill No. 838 as amended October 8, 2009

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Senate Bill No. 838 as amended October 8, 2009

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Senate Bill No. 838 as amended October 9, 2009

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Senate Bill No. 838 as amended October 9, 2009

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25 Sec. 417. (1) The credit provided in this section shall be
26 taken after the credits under sections 403 and 405 and before any
27 other credit under this act and is available to any taxpayer with

1 gross receipts that do not exceed \$20,000,000.00 and with adjusted
2 business income minus the loss adjustment that does not exceed
3 ~~\$1,300,000.00~~ **\$1,400,000.00** as adjusted annually for inflation
4 using the Detroit consumer price index and subject to the
5 following:

6 (a) An individual, a partnership, a limited liability company,
7 or a subchapter S corporation is disqualified if the individual,
8 any 1 partner of the partnership, any 1 member of the limited
9 liability company, or any 1 shareholder of the subchapter S
10 corporation receives more than ~~\$180,000.00~~ **\$182,000.00 AS ADJUSTED**
11 **ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX** as a
12 distributive share of the adjusted business income minus the loss
13 adjustment of the individual, the partnership, the limited
14 liability company, or the subchapter S corporation.

15 (b) A corporation other than a subchapter S corporation is
16 disqualified if either of the following occur for the respective
17 tax year:

18 (i) Compensation and directors' fees of a shareholder or
19 officer exceed ~~\$180,000.00~~ **\$182,000.00 AS ADJUSTED ANNUALLY FOR**
20 **INFLATION USING THE DETROIT CONSUMER PRICE INDEX.**

21 (ii) The sum of the following amounts exceeds ~~\$180,000.00~~
22 **\$182,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
23 **CONSUMER PRICE INDEX:**

24 (A) Compensation and directors' fees of a shareholder.

25 (B) The product of the percentage of outstanding ownership or
26 of outstanding stock owned by that shareholder multiplied by the
27 difference between the sum of business income and, to the extent

1 deducted in determining federal taxable income, a carryback or a
2 carryover of a net operating loss or capital loss, minus the loss
3 adjustment.

4 (c) Subject to the reduction percentage determined under
5 subsection (3), the credit determined under this subsection shall
6 be reduced by the following percentages in the following
7 circumstances:

8 (i) If an individual, any 1 partner of the partnership, any 1
9 member of the limited liability company, or any 1 shareholder of
10 the subchapter S corporation receives as a distributive share of
11 adjusted business income minus the loss adjustment of the
12 individual, partnership, limited liability company, or subchapter S
13 corporation; if compensation and directors' fees of a shareholder
14 or officer of a corporation other than a subchapter S corporation
15 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
16 is more than ~~\$160,000.00~~ **\$164,000.00 AS ADJUSTED ANNUALLY FOR**
17 **INFLATION USING THE DETROIT CONSUMER PRICE INDEX** but less than
18 ~~\$165,000.00~~ **\$166,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
19 **THE DETROIT CONSUMER PRICE INDEX**, the credit is reduced by ~~20%~~ **10%**.

20 (ii) If an individual, any 1 partner of the partnership, any 1
21 member of the limited liability company, or any 1 shareholder of
22 the subchapter S corporation receives as a distributive share of
23 adjusted business income minus the loss adjustment of the
24 individual, partnership, limited liability company, or subchapter S
25 corporation; if compensation and directors' fees of a shareholder
26 or officer of a corporation other than a subchapter S corporation
27 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)

1 is ~~\$165,000.00~~ **\$166,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
 2 **THE DETROIT CONSUMER PRICE INDEX** or more but less than ~~\$170,000.00~~
 3 **\$168,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
 4 **CONSUMER PRICE INDEX**, the credit is reduced by ~~40%~~ **20%**.

5 (iii) If an individual, any 1 partner of the partnership, any 1
 6 member of the limited liability company, or any 1 shareholder of
 7 the subchapter S corporation receives as a distributive share of
 8 adjusted business income minus the loss adjustment of the
 9 individual, partnership, limited liability company, or subchapter S
 10 corporation; if compensation and directors' fees of a shareholder
 11 or officer of a corporation other than a subchapter S corporation
 12 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
 13 is ~~\$170,000.00~~ **\$168,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
 14 **THE DETROIT CONSUMER PRICE INDEX** or more but less than ~~\$175,000.00~~
 15 **\$170,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT**
 16 **CONSUMER PRICE INDEX**, the credit is reduced by ~~60%~~ **30%**.

17 (iv) If an individual, any 1 partner of the partnership, any 1
 18 member of the limited liability company, or any 1 shareholder of
 19 the subchapter S corporation receives as a distributive share of
 20 adjusted business income minus the loss adjustment of the
 21 individual, partnership, limited liability company, or subchapter S
 22 corporation; if compensation and directors' fees of a shareholder
 23 or officer of a corporation other than a subchapter S corporation
 24 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
 25 is ~~\$175,000.00~~ **\$170,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING**
 26 **THE DETROIT CONSUMER PRICE INDEX** or more but ~~not in excess of~~
 27 ~~\$180,000.00~~ **LESS THAN \$172,000.00 AS ADJUSTED ANNUALLY FOR**

1 INFLATION USING THE DETROIT CONSUMER PRICE INDEX, the credit is
2 reduced by ~~80%~~40%.

3 (v) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1
4 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
5 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
6 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE
7 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S
8 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
9 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
10 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)
11 IS \$172,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT
12 CONSUMER PRICE INDEX OR MORE BUT LESS THAN \$174,000.00 AS ADJUSTED
13 ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX, THE
14 CREDIT IS REDUCED BY 50%.

15 (vi) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1
16 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
17 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
18 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE
19 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S
20 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
21 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
22 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)
23 IS \$174,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT
24 CONSUMER PRICE INDEX OR MORE BUT LESS THAN \$176,000.00 AS ADJUSTED
25 ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX, THE
26 CREDIT IS REDUCED BY 60%.

27 (vii) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1

1 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
2 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
3 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE
4 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S
5 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
6 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
7 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)
8 IS \$176,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT
9 CONSUMER PRICE INDEX OR MORE BUT LESS THAN \$178,000.00 AS ADJUSTED
10 ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX, THE
11 CREDIT IS REDUCED BY 70%.

12 (viii) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1
13 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
14 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
15 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE
16 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S
17 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
18 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
19 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)
20 IS \$178,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT
21 CONSUMER PRICE INDEX OR MORE BUT LESS THAN \$180,000.00 AS ADJUSTED
22 ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX, THE
23 CREDIT IS REDUCED BY 80%.

24 (ix) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1
25 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
26 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
27 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE

1 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S
2 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
3 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
4 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B) (ii) (A) AND (B)
5 IS \$180,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT
6 CONSUMER PRICE INDEX OR MORE BUT LESS THAN OR EQUAL TO \$182,000.00
7 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE
8 INDEX, THE CREDIT IS REDUCED BY 90%.

9 (2) For the purposes of determining disqualification under
10 subsection (1), an active shareholder's share of business income
11 shall not be attributed to another active shareholder.

12 (3) To determine the reduction percentage under subsection
13 (1)(c), the following apply:

14 (a) The reduction percentage for a partnership, limited
15 liability company, or subchapter S corporation is based on the
16 distributive share of adjusted business income minus loss
17 adjustment of the partner, member, or shareholder with the greatest
18 distributive share of adjusted business income minus loss
19 adjustment.

20 (b) The reduction percentage for a corporation other than a
21 subchapter S corporation is the greater of the following:

22 (i) The reduction percentage based on the compensation and
23 directors' fees of the shareholder or officer with the greatest
24 amount of compensation and directors' fees.

25 (ii) The reduction percentage based on the sum of the amounts
26 in subsection (1)(b)(ii)(A) and (B) for the shareholder or officer
27 with the greatest sum of the amounts in subsection (1)(b)(ii)(A) and

1 (B).

2 (4) A taxpayer that qualifies under subsection (1) is allowed
3 a credit against the tax imposed under this act. The credit under
4 this subsection is the amount by which the tax imposed under this
5 act exceeds 1.8% of adjusted business income.

6 (5) If gross receipts exceed \$19,000,000.00, the credit shall
7 be reduced by a fraction, the numerator of which is the amount of
8 gross receipts over \$19,000,000.00 and the denominator of which is
9 \$1,000,000.00. The credit shall not exceed 100% of the tax
10 liability imposed under this act.

11 (6) For a taxpayer that reports for a tax year less than 12
12 months, the amounts specified in this section for gross receipts,
13 adjusted business income, and share of business income shall be
14 multiplied by a fraction, the numerator of which is the number of
15 months in the tax year and the denominator of which is 12.

16 (7) The department shall permit a taxpayer that elects to
17 claim the credit allowed under this section based on the amount by
18 which the tax imposed under this act exceeds the percentage of
19 adjusted business income for the tax year as determined under
20 subsection (4), and that is not required to reduce the credit
21 pursuant to subsection (1) or (5), to file and pay the tax imposed
22 by this act without computing the tax imposed under sections 201
23 and 203.

24 (8) Compensation paid by the professional employer
25 organization to the officers of the client and to employees of the
26 professional employer organization who are assigned or leased to
27 and perform services for the client shall be included in

1 determining eligibility of the client under this section.

2 (9) As used in this section:

3 (a) "Active shareholder" means a shareholder who receives at
4 least \$10,000.00 in compensation, directors' fees, or dividends
5 from the business, and who owns at least 5% of the outstanding
6 stock or other ownership interest.

7 (b) "Adjusted business income" means business income as
8 defined in section 105 with all of the following adjustments:

9 (i) Add compensation and directors' fees of active shareholders
10 of a corporation.

11 (ii) Add, to the extent deducted in determining federal taxable
12 income, a carryback or a carryover of a net operating loss.

13 (iii) Add, to the extent deducted in determining federal taxable
14 income, a capital loss.

15 (iv) Add compensation and directors' fees of officers of a
16 corporation.

17 (c) "Detroit consumer price index" means the most
18 comprehensive index of consumer prices available for the Detroit
19 area from the United States department of labor, bureau of labor
20 statistics.

21 (d) "Loss adjustment" means the amount by which adjusted
22 business income was less than zero in any of the 5 tax years
23 immediately preceding the tax year for which eligibility for the
24 credit under this section is being determined. In determining the
25 loss adjustment for a tax year, a taxpayer is not required to use
26 more of the taxpayer's total negative adjusted business income than
27 the amount needed to qualify the taxpayer for the credit under this

1 section. A taxpayer shall not be considered to have used any
2 portion of the taxpayer's negative adjusted business income amount
3 unless the portion used is necessary to qualify for the credit
4 under this section. A taxpayer shall not reuse a negative adjusted
5 business income amount used as a loss adjustment in a previous tax
6 year or use a negative adjusted business income amount from a year
7 in which the taxpayer did not receive the credit under this
8 section.

9 Sec. 437. (1) Subject to the criteria under this section, a
10 qualified taxpayer that has unused credits or has a preapproval
11 letter issued after December 31, 2007 and before January 1, 2013,
12 or a taxpayer that received a preapproval letter prior to January
13 1, 2008 under section 38g of former 1975 PA 228 and has not
14 received a certificate of completion prior to the taxpayer's last
15 tax year, provided that the project is completed not more than 5
16 years after the preapproval letter for the project is issued unless
17 extended under subsection (9) or if it is a multiphase project not
18 more than 10 years after the preapproval letter, as amended, if
19 applicable, for the project is issued, or an assignee under
20 subsection (20), (21), or (22) may claim a credit that has been
21 approved under section 38g of former 1975 PA 228 or under
22 subsection (2), (3), or (4) against the tax imposed by this act
23 equal to either of the following:

24 (a) For projects approved before April 8, 2008, if the total
25 of all credits for a project is \$1,000,000.00 or less, 10% of the
26 cost of the qualified taxpayer's eligible investment paid or
27 accrued by the qualified taxpayer on an eligible property provided

1 that the project does not exceed the amount stated in the
2 preapproval letter, as amended. For projects approved, or amended,
3 on and after April 8, 2008, if the total of all eligible
4 investments for a project are \$10,000,000.00 or less, up to 12.5%
5 of the costs of the qualified taxpayer's eligible investment paid
6 or accrued by the qualified taxpayer on an eligible property or up
7 to 15% of the costs of the qualified taxpayer's eligible investment
8 paid or accrued by the qualified taxpayer on an eligible property
9 if the project is designated as an urban development area project
10 by the Michigan economic growth authority to the extent that the
11 project does not exceed the amount stated in the preapproval
12 letter, as amended, or, until December 31, 2010, up to 20% of the
13 costs of the qualified taxpayer's eligible investment paid or
14 accrued by the qualified taxpayer on an eligible property if the
15 project is designated as an urban development area project by the
16 Michigan economic growth authority. If eligible investment exceeds
17 the amount of eligible investment in the preapproval letter, as
18 amended, for that project, the total of all credits for the project
19 shall not exceed the total of all credits on the certificate of
20 completion.

21 (b) For projects approved before April 8, 2008, if the total
22 of all credits for a project is more than \$1,000,000.00 but
23 \$30,000,000.00 or less and, except as provided in subsection
24 (6)(b), the project is located in a qualified local governmental
25 unit, a percentage as determined by the Michigan economic growth
26 authority not to exceed 10% of the cost of the qualified taxpayer's
27 eligible investment as determined under subsection (11) paid or

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

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

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

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

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

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

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

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

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

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

1 more than 20 projects each calendar year under subsection (4), and
2 the following limitations apply:

3 (a) Of the 20 projects allowed under this subsection, the
4 total of all credits for each project may be more than
5 \$10,000,000.00 but \$30,000,000.00 or less for only 1 project.

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

16 (c) The project allowed under subdivision (a) may also qualify
17 under subdivision (b).

18 (7) The Michigan economic growth authority shall review all
19 applications for projects under subsection (4) and, if an
20 application is approved, shall determine the maximum total of all
21 credits for that project. Before approving a project for which the
22 total of all credits will be more than \$10,000,000.00 but
23 \$30,000,000.00 or less only, the Michigan economic growth authority
24 shall determine that the project would not occur in this state
25 without the tax credit offered under subsection (4). The Michigan
26 economic growth authority shall consider the following criteria to
27 the extent reasonably applicable to the type of project proposed

1 when approving a project under subsection (4), and the chairperson
2 of the Michigan economic growth authority or his or her designee
3 shall consider the following criteria to the extent reasonably
4 applicable to the type of project proposed when approving a project
5 under subsection (2) or (3) or when considering an amendment to a
6 project under subsection (9):

7 (a) The overall benefit to the public.

8 (b) The extent of reuse of vacant buildings and redevelopment
9 of blighted property.

10 (c) Creation of jobs.

11 (d) Whether the eligible property is in an area of high
12 unemployment.

13 (e) The level and extent of contamination alleviated by the
14 qualified taxpayer's eligible activities to the extent known to the
15 qualified taxpayer.

16 (f) The level of private sector contribution.

17 (g) The cost gap that exists between the site and a similar
18 greenfield site as determined by the Michigan economic growth
19 authority.

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

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

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

27 (8) A qualified taxpayer may apply for projects under this

1 section for eligible investment on more than 1 eligible property in
2 a tax year. Each project approved and each project for which a
3 certificate of completion is issued under this section shall be for
4 eligible investment on 1 eligible property.

5 (9) If, after a taxpayer's project has been approved and the
6 taxpayer has received a preapproval letter but before the taxpayer
7 has made an eligible investment, other than soft costs, at the
8 property, the taxpayer determines that the project cannot be
9 completed as preapproved, the taxpayer may petition the Michigan
10 economic growth authority to amend the project and the preapproval
11 letter to increase the maximum total eligible investment for the
12 project on which credits may be claimed and the maximum total of
13 all credits for the project. A taxpayer may petition the Michigan
14 economic growth authority to make any other amendments to the
15 project or preapproval letter at any time before a certificate of
16 completion is issued. Amendments to the project or preapproval
17 letter may include, but are not limited to, extending the duration
18 of time provided to complete the project, as long as that extension
19 does not exceed 10 years from the date of the preapproval letter.

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 10
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 or the chairperson of the Michigan
19 economic growth authority or his or her designee, for projects
20 approved under subsection (2) or (3), or the Michigan economic
21 growth authority, for projects approved under subsection (4),
22 verifies that the component is complete. A credit assigned based on
23 a multiphase project shall be claimed by the assignee in the tax
24 year in which the assignment is made. The total of all credits for
25 a multiphase project shall not exceed the amount stated in the
26 preapproval letter, as amended, for the project under subsection
27 (1). If all components of a multiphase project are not completed by

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

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

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

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

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

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

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

22 (e) The project number.

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

27 (g) For a multiphase project under subsection (10), the amount

1 of each credit assigned and the amount of all credits claimed in
2 each tax year before the year in which the project is completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 any portion of a credit assigned under this subsection to 1 or more
2 assignees. The credit assignment or a subsequent reassignment under
3 this subsection shall be made on a form prescribed by the Michigan
4 economic growth authority. The Michigan economic growth authority
5 or its designee shall review and issue a completed assignment or
6 reassignment certificate to the assignee or reassignee. An assignee
7 or subsequent reassignee shall attach a copy of the completed
8 assignment certificate to its annual return required under this
9 act, for the tax year in which the assignment or reassignment is
10 made and the assignee or reassignee first claims a credit, which
11 shall be the same tax year. A credit assignment based on a credit
12 for a component of a multiphase project that is completed before
13 January 1, 2006 shall be made under section 38g(18) of former 1975
14 PA 228. A credit assignment based on a credit for a component of a
15 multiphase project that is completed on or after January 1, 2006
16 may be made under this section. In addition to all other procedures
17 and requirements under this section, the following apply if the
18 total of all credits for a project is more than \$10,000,000.00 but
19 \$30,000,000.00 or less:

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

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

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

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

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

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

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

15 (c) If the project promotes sustainable redevelopment.

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

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

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

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

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

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

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

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

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

1 following:

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

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

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

9 (31) For the 2008 calendar year, the total of all credits for
10 all projects approved under subsection (2) or (3) shall not exceed
11 \$63,000,000.00. For ~~each~~ **THE 2009** calendar year, ~~after 2008,~~ the
12 total of all credits for all projects approved under subsection (2)
13 or (3) shall not exceed \$40,000,000.00. **FOR EACH CALENDAR YEAR**
14 **AFTER 2009, THE TOTAL OF ALL CREDITS FOR ALL PROJECTS APPROVED**
15 **UNDER SUBSECTION (2) OR (3) SHALL NOT EXCEED \$30,000,000.00.** If the
16 Michigan economic growth authority approves a total of all credits
17 for all projects under subsection (2) or (3) of less than
18 \$40,000,000.00 in a ~~THE 2009~~ calendar year **OR LESS THAN**
19 **\$30,000,000.00 IN A CALENDAR YEAR AFTER 2009,** the Michigan economic
20 growth authority may carry forward for 1 year only the difference
21 between \$40,000,000.00 **OR \$30,000,000.00, WHICHEVER IS APPLICABLE,**
22 and the total of all credits for all projects under this subsection
23 approved in the immediately preceding calendar year.

24 (32) As used in this section:

25 (a) "Annual credit amount" means the maximum amount that a
26 qualified taxpayer is eligible to claim each tax year for a project
27 for which the total of all credits is more than \$10,000,000.00 but

1 \$30,000,000.00 or less, as approved under subsection (4).

2 (b) "Authority" means a brownfield redevelopment authority
3 created under the brownfield redevelopment financing act, 1996 PA
4 381, MCL 125.2651 to 125.2672.

5 (c) "Blighted", "brownfield plan", "eligible activities",
6 "facility", "functionally obsolete", "qualified local governmental
7 unit", and "response activity" mean those terms as defined in the
8 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
9 to 125.2672.

10 (d) "Eligible investment" or "eligible investments" means,
11 when made after the approval date of the brownfield plan but in any
12 event no earlier than 90 days prior to the date of the preapproval
13 letter, any demolition, construction, restoration, alteration,
14 renovation, or improvement of buildings or site improvements on
15 eligible property and the addition of machinery, equipment, and
16 fixtures to eligible property after the date that eligible
17 activities on that eligible property have started pursuant to a
18 brownfield plan under the brownfield redevelopment financing act,
19 1996 PA 381, MCL 125.2651 to 125.2672, if the costs of the eligible
20 investment are not otherwise reimbursed to the taxpayer or paid for
21 on behalf of the taxpayer from any source other than the taxpayer.
22 The addition of leased machinery, equipment, or fixtures to
23 eligible property by a lessee of the machinery, equipment, or
24 fixtures is eligible investment if the lease of the machinery,
25 equipment, or fixtures has a minimum term of 10 years or is for the
26 expected useful life of the machinery, equipment, or fixtures, and
27 if the owner of the machinery, equipment, or fixtures is not the

1 qualified taxpayer with regard to that machinery, equipment, or
2 fixtures. For projects approved after April 8, 2008, eligible
3 investment does not include certain soft costs of the eligible
4 investment as determined by the Michigan economic growth authority,
5 including, but not limited to, developer fees, appraisals,
6 performance bonds, closing costs, bank fees, loan fees, risk
7 contingencies, financing costs, permanent or construction period
8 interest, legal expenses, leasing or sales commissions, marketing
9 costs, professional fees, shared savings, taxes, title insurance,
10 bank inspection fees, insurance, and project management fees.
11 Notwithstanding the foregoing, eligible investment does include
12 architectural, engineering, surveying, and similar professional
13 fees.

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

21 (i) Is in a qualified local governmental unit and is a
22 facility, functionally obsolete, or blighted and includes parcels
23 that are adjacent or contiguous to that property if the development
24 of the adjacent and contiguous parcels is estimated to increase the
25 captured taxable value of that property.

26 (ii) Is not in a qualified local governmental unit and is a
27 facility, and includes parcels that are adjacent or contiguous to

1 that property if the development of the adjacent and contiguous
2 parcels is estimated to increase the captured taxable value of that
3 property.

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

6 (f) "Last tax year" means the taxpayer's tax year under former
7 1975 PA 228 that begins after December 31, 2006 and before January
8 1, 2008.

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

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

15 (i) "Personal property" means that term as defined in section
16 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
17 that personal property does not include either of the following:

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

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

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

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

27 (ii) All eligible investment on property that is not a facility

1 but is functionally obsolete or blighted.

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

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

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

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

24 (m) "Urban development area project" means a project located
25 on eligible property in the downtown or traditional central
26 business district of a qualified local governmental unit or county
27 seat or along a traditional commercial corridor of a qualified

1 local governmental unit or county seat as determined by the
2 Michigan economic growth authority or the chairperson of the
3 Michigan economic growth authority or his or her designee.

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

7 (a) Eligible property means property identified under a
8 brownfield plan that was used or is currently used for commercial,
9 industrial, public, or residential purposes and that is 1 of the
10 following:

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

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

19 (A) Infrastructure improvements that directly benefit the
20 eligible property.

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

24 (C) Lead or asbestos abatement.

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

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

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

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

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

Sec. 441. (1) For the 2008, 2009, ~~and 2010~~, **2011, 2012, AND 2013** tax years, except as otherwise provided under subsection (2), a taxpayer may claim the Michigan entrepreneurial credit equal to 100% of the eligible taxpayer's tax liability imposed by this act attributable to increased employment under subdivision (b) for ~~3~~ **EACH YEAR** if the taxpayer meets all of the following conditions:

(a) Had less than \$25,000,000.00 in gross receipts in the immediately preceding tax year. The \$25,000,000.00 amount shall be

1 annually adjusted for inflation using the Detroit consumer price
2 index.

3 (b) ~~Has~~**FOR THE 2008 TAX YEAR, HAS** created in this state or
4 transferred into this state not fewer than 20 new jobs in the
5 immediately preceding tax year ~~—OR, FOR EACH TAX YEAR AFTER 2008~~
6 **THAT THE CREDIT IS AVAILABLE, HAS CREATED IN THIS STATE OR**
7 **TRANSFERRED INTO THIS STATE NOT FEWER THAN 8 NEW JOBS IN THE**
8 **IMMEDIATELY PRECEDING TAX YEAR.**

9 (c) ~~Has~~**FOR THE 2008 TAX YEAR, HAS** made a capital investment
10 in this state of not less than \$1,250,000.00 in the immediately
11 preceding tax year ~~—OR, FOR EACH TAX YEAR AFTER 2008 THAT THE~~
12 **CREDIT IS AVAILABLE, HAS MADE A CAPITAL INVESTMENT IN THIS STATE OF**
13 **NOT LESS THAN \$500,000.00 IN THE IMMEDIATELY PRECEDING TAX YEAR.**

14 For purposes of determining eligibility under this subdivision, the
15 capital investment shall not include the purchase of an existing
16 plant or the purchase of existing equipment.

17 (d) Is not a retail establishment as described in major groups
18 52 through 59 and 70 under the standard industrial classification
19 code as compiled by the United States department of labor. However,
20 a restaurant that did not exist, as determined by the treasurer, in
21 this state in the immediately preceding year before which the
22 credit is claimed and that is not a franchise or a part of a
23 unitary business group may qualify for the credit under this
24 section.

25 (2) A taxpayer that is an eligible business as defined in
26 section 407 and that received an eligible contribution as defined
27 in section 407 for which a credit was claimed by another taxpayer

1 may claim the Michigan entrepreneurial credit equal to 100% of the
2 taxpayer's tax liability imposed by this act attributable to the
3 increased employment under subdivision (b) for ~~3 years~~ **EACH YEAR** if
4 the taxpayer meets all of the following conditions:

5 (a) Had less than \$25,000,000.00 in gross receipts in the
6 immediately preceding tax year.

7 (b) Has increased the number of new jobs in this state by at
8 least 20% from the immediately preceding tax year.

9 (3) An eligible taxpayer may claim the credit under this
10 section on a form prescribed by the department.

11 (4) If the new jobs for which the taxpayer qualifies for this
12 credit are relocated outside of this state within 5 years after
13 claiming the credit under this section or if the taxpayer reduces
14 the employment levels by more than 10% of the jobs for which the
15 taxpayer qualifies for the credit under this section, that taxpayer
16 is liable in an amount equal to the total of all credits received
17 under this section. Any liability under this subsection shall be
18 collected under 1941 PA 122, MCL 205.1 to 205.31.

19 (5) A taxpayer's liability attributable to the increased
20 employment is the total liability of the taxpayer multiplied by a
21 fraction the numerator of which is the payroll of the increased
22 jobs of the facility meeting the requirements of this section and
23 the denominator of which is the taxpayer's total payroll in this
24 state.

25 (6) As used in this section:

26 (a) "Detroit consumer price index" means the most
27 comprehensive index of consumer prices available for the Detroit

1 area from the United States department of labor, bureau of labor
2 statistics.

3 (b) "New jobs" means jobs that meet all of the following
4 criteria:

5 (i) Did not exist in this state in the immediately preceding
6 tax year.

7 (ii) Represent an overall increase in full-time equivalent jobs
8 of the taxpayer in this state in the immediately preceding tax
9 year.

10 (iii) Are not jobs into which employees transfer if the
11 employees worked in this state for the taxpayer in other jobs prior
12 to beginning the new jobs.

13 (c) "Payroll" means total salaries and wages before deducting
14 any personal or dependency exemptions.

15 Sec. 455. (1) The Michigan film office, with the concurrence
16 of the state treasurer, may enter into an agreement with an
17 eligible production company providing the company with a credit
18 against the tax imposed by this act or against taxes withheld under
19 chapter 7 of the income tax act of 1967, 1967 PA 281, MCL 206.351
20 to 206.367, as provided under this section and section 367 of the
21 income tax act of 1967, 1967 PA 281, MCL 206.367. To qualify for
22 the credit under this section, a company shall meet all of the
23 following requirements:

24 (a) Spend at least \$50,000.00 in this state for the
25 development, preproduction, production, or postproduction costs of
26 a state certified qualified production.

27 (b) Enter into an agreement as provided in this section.

1 (c) Receive a postproduction certificate of completion from
2 the office under subsection (5).

3 (d) Submit the postproduction certificate of completion issued
4 by the office under subsection (5) to the department under
5 subsection (7).

6 (e) Shall not be delinquent in a tax or other obligation owed
7 to this state or be owned or under common control of an entity that
8 is delinquent in a tax or other obligation owed to this state.

9 (2) ~~For~~ **SUBJECT TO THE LIMITATION UNDER SUBSECTION (12), FOR**
10 direct production expenditures or qualified personnel expenditures
11 made after February 29, 2008, an agreement under this section may
12 provide for an eligible production company to claim a tax credit
13 equal to ~~42%~~ **39%** of direct production expenditures for a state
14 certified qualified production in a core community, ~~40%~~ **37%** of
15 direct production expenditures for a state certified qualified
16 production in part of this state other than a core community, and
17 30% for qualified personnel expenditures. A taxpayer shall not
18 claim a credit under this section for any of the following:

19 (a) A direct expenditure, or qualified personnel expenditure,
20 for which the company claims a credit under section 459.

21 (b) A direct expenditure, or qualified personnel expenditure,
22 for which the company claims a credit under section 367 of the
23 income tax act of 1967, 1967 PA 281, MCL 206.367.

24 (c) A direct expenditure, or qualified personnel expenditure,
25 for which another taxpayer claims a credit under this section, a
26 credit under section 459, or a credit under section 367 of the
27 income tax act of 1967, 1967 PA 281, MCL 206.367.

1 (3) An eligible production company intending to produce a
2 qualified production in this state, or that initiated production of
3 a qualified production after February 29, 2008 and before ~~the~~
4 ~~effective date of the amendatory act that added this section~~ **APRIL**
5 **8, 2008**, may submit an application to enter into an agreement under
6 this section to the Michigan film office. Except for a qualified
7 production for which production was initiated after February 29,
8 2008 and before ~~the effective date of the amendatory act that added~~
9 ~~this section~~ **APRIL 8, 2008**, direct production expenditures and
10 qualified personnel expenditures incurred prior to approval of an
11 agreement under this section are not eligible for the credit under
12 this section. The request shall be submitted in a form prescribed
13 by the Michigan film office and shall be accompanied by a \$100.00
14 application fee and all of the information and records requested by
15 the office. An application fee received by the office under this
16 subsection shall be deposited in the Michigan film promotion fund.
17 The office shall not process the application until it is complete.
18 As part of the application, the company shall estimate direct
19 production expenditures and qualified personnel expenditures for an
20 identified qualified production. If the office, with the
21 concurrence of the state treasurer, determines to enter into an
22 agreement under this section, the agreement shall provide for all
23 of the following:

24 (a) A requirement that the eligible production company
25 commence work in this state on the identified qualified production
26 within 90 days of the date of the agreement or else the agreement
27 shall expire. However, upon request submitted by the company based

1 on good cause, the office may extend the period for commencement of
2 work in this state for up to an additional 90 days.

3 (b) A statement identifying the company and the qualified
4 production that the company intends to produce in whole or in part
5 in this state.

6 (c) A unique number assigned to the qualified production by
7 the office.

8 (d) A requirement that the qualified production not depict
9 obscene matter or an obscene performance.

10 (e) If the qualified production is a long-form narrative film
11 production, a requirement that the qualified production include an
12 acknowledgement that the qualified production was filmed in this
13 state.

14 (f) A requirement that the company provide the office with the
15 information and independent certification the office and the
16 department deem necessary to verify direct production expenditures,
17 qualified personnel expenditures, and eligibility for the credit
18 under this section.

19 (g) If determined to be necessary by the office and the state
20 treasurer, a provision for addressing expenditures in excess of
21 those identified in the agreement.

22 (4) In determining whether to enter into an agreement under
23 this section, the Michigan film office and the state treasurer
24 shall consider all of the following:

25 (a) The potential that in the absence of the credit the
26 qualified production will be produced in a location other than this
27 state.

1 (b) The extent to which the qualified production may have the
2 effect of promoting this state as a tourist destination.

3 (c) The extent to which the qualified production may have the
4 effect of promoting economic development or job creation in this
5 state.

6 (d) The extent to which the credit will attract private
7 investment for the production of qualified productions in this
8 state.

9 (e) The record of the eligible production company in
10 completing commitments to engage in a qualified production.

11 (5) If the Michigan film office determines that an eligible
12 production company has complied with the terms of an agreement
13 entered into under this section, the office shall issue a
14 postproduction certificate **OF COMPLETION** to the company. The
15 company shall submit a request to the office for a postproduction
16 certificate **OF COMPLETION** on a form prescribed by the office, along
17 with any information or independent certification the office or the
18 department deems necessary. The office shall process each request
19 within 60 days after the request is complete. However, the office
20 may request additional information or independent certification
21 before issuing a postproduction certificate of completion and need
22 not issue the postproduction certificate **OF COMPLETION** until
23 satisfied that direct production expenditures, qualified personnel
24 expenditures, and eligibility are adequately established. The
25 additional information requested may include a report of direct
26 production expenditures and qualified personnel expenditures for
27 the qualified production audited and certified by an independent

1 certified public accountant. Each postproduction certificate of
2 completion shall be signed by the Michigan film commissioner and
3 shall include the following information:

4 (a) The name of the eligible production company.

5 (b) The name of the certified production produced in whole or
6 in part in this state.

7 (c) The eligible production company's direct production
8 expenditures and qualified personnel expenditures for the qualified
9 production.

10 (d) The date of completion for the qualified production in
11 this state.

12 (e) The unique number assigned to the qualified production
13 project by the Michigan film office under subsection (3).

14 (f) The eligible production company's federal employer
15 identification number or Michigan treasury number.

16 (g) Any independent certification required by the department
17 or the Michigan film office.

18 (6) Information, records, or other data received, prepared,
19 used, or retained by the Michigan film office under this section
20 that are submitted by an eligible production company and considered
21 by the taxpayer and acknowledged by the office as confidential
22 shall not be subject to the disclosure requirements of the freedom
23 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,
24 records, or other data shall only be considered confidential to the
25 extent that the information or records describe the commercial and
26 financial operations or intellectual property of the company, the
27 information or records have not been publicly disseminated at any

1 time, and disclosure of the information or records may put the
2 company at a competitive disadvantage.

3 (7) An eligible production company shall submit a
4 postproduction certificate of completion issued under subsection
5 (5) to the department. If the credit allowed under this section
6 exceeds the tax liability of the company for the tax year or if the
7 company claiming the credit does not have a tax liability under
8 this act for the tax year, the department shall refund the excess
9 or pay the amount of the credit to the company. The credit under
10 this section shall be claimed after all other credits under this
11 act.

12 (8) An eligible production company may assign all or a portion
13 of a credit under this section to any assignee. An assignee may
14 subsequently assign a credit or any portion of a credit assigned
15 under this subsection to 1 or more assignees. A company may claim a
16 portion of a credit and assign the remaining credit amount. A
17 credit assignment under this subsection is irrevocable. The credit
18 assignment under this subsection shall be made on a form prescribed
19 by the department. The qualified taxpayer shall send a copy of the
20 completed assignment form to the department in the tax year in
21 which the assignment is made and shall attach a copy of the form to
22 the return on which the credit is claimed.

23 (9) The amount of the credit under this section shall be
24 reduced by a credit application and redemption fee equal to 0.5% of
25 the credit claimed, which shall be deducted from the credit
26 otherwise payable to the taxpayer claiming the credit and be
27 deposited by the department in the Michigan film promotion fund.

1 (10) A taxpayer that willfully submits information under this
2 section that the taxpayer knows to be fraudulent or false shall, in
3 addition to any other penalties provided by law, be liable for a
4 civil penalty equal to the amount of the taxpayer's credit under
5 this section. A penalty collected under this section shall be
6 deposited in the Michigan film promotion fund.

7 (11) Not later than March 1 of each year after 2008, the
8 Michigan film office shall submit to the governor, the president of
9 the Michigan strategic fund, the chairperson of the senate finance
10 committee, and the house tax policy committee an annual report
11 concerning the operation and effectiveness of the credit under this
12 section. The requirements of section 28(1)(f) of 1941 PA 122, MCL
13 205.28, do not apply to disclosure of tax information required by
14 this subsection. The report shall include all of the following:

15 (a) A brief assessment of the overall effectiveness of the
16 credit under this section at attracting qualified productions to
17 this state during the immediately preceding calendar year.

18 (b) The number of qualified productions for which the eligible
19 production company applied for a tax credit under this section
20 during the immediately preceding year, the names of the qualified
21 productions produced in this state for which credits were begun or
22 completed in the immediately preceding year, and the locations in
23 this state that were used in the production of qualified
24 productions in the immediately preceding calendar year.

25 (c) The amount of money spent by each eligible production
26 company identified in subdivision (b) to produce each qualified
27 production in this state and a breakdown of all production spending

1 by all companies classified as goods, services, or salaries and
2 wages in the immediately preceding calendar year.

3 (d) An estimate of the number of persons employed in this
4 state by eligible production companies that qualified for the
5 credit under this section in the immediately preceding calendar
6 year.

7 (e) The value of all tax credit certificates of completion
8 issued under this section in the immediately preceding calendar
9 year.

10 (12) FOR THE 2010 CALENDAR YEAR AND EACH CALENDAR YEAR
11 THEREAFTER, THE TOTAL OF ALL CREDITS FOR ALL POSTPRODUCTION
12 CERTIFICATES OF COMPLETION ISSUED UNDER SUBSECTION (5) FOR
13 COMMERCIALS THAT ARE ELIGIBLE AS A QUALIFIED PRODUCTION DURING THE
14 CALENDAR YEAR SHALL NOT EXCEED \$15,000,000.00.

15 (13) ~~(12)~~As used in this section:

16 (a) "Below the line crew" means that term as defined under
17 section 459.

18 (b) "Core community" means a qualified local governmental unit
19 as defined under section 2 of the obsolete property rehabilitation
20 act, 2000 PA 146, MCL 125.2782.

21 (c) "Direct production expenditure" means a development,
22 preproduction, production, or postproduction expenditure made in
23 this state that is not a qualified personnel expenditure directly
24 attributable to the production or distribution of a qualified
25 production that is a transaction subject to taxation in this state,
26 including, but not limited to, all of the following:

27 (i) Payments to vendors doing business in this state to

1 purchase or use tangible personal property in producing or
2 distributing the qualified production or to purchase services
3 relating to the production or distribution of the qualified
4 production, including all of the following:

5 (A) Expenditures for optioning or purchasing intellectual
6 property including, but not limited to, books, scripts, music, or
7 trademarks relating to the development or purchase of a script,
8 story, scenario, screenplay, or format, including all expenditures
9 generally associated with the optioning or purchase of intellectual
10 property, including option money, agent fees, and attorney fees
11 relating to the transaction, but not including deferrals,
12 deferments, royalties, profit participation, or recourse or
13 nonrecourse loans negotiated by the eligible production company to
14 obtain the rights to the intellectual property.

15 (B) Production work, production equipment, production
16 software, development work, postproduction work, postproduction
17 equipment, postproduction software, set design, set construction,
18 set operations, props, lighting, wardrobe, makeup, makeup
19 accessories, photography, sound synchronization, special effects,
20 visual effects, audio effects, film processing, music, sound
21 mixing, editing, and related services and materials.

22 (C) Use of facilities or equipment, use of soundstages or
23 studios, location fees, and related services and materials.

24 (D) Catering, food, lodging, and related services and
25 materials.

26 (E) Use of vehicles, which may include chartered aircraft
27 based in this state used for transportation in this state directly

1 attributable to production of a qualified production, but may not
2 include the chartering of aircraft for transportation outside of
3 this state.

4 (F) Commercial airfare if purchased through a travel agency or
5 travel company based in this state for travel to and from this
6 state or within this state directly attributable to production or
7 distribution of a qualified production.

8 (G) Insurance coverage or bonding if purchased from an
9 insurance agent based in this state.

10 (H) Expenditures for distribution, including, but not limited
11 to, both of the following:

12 (I) Preproduction, production, or postproduction costs
13 relating to the creation of trailers, marketing videos, commercials
14 **OTHER THAN COMMERCIALS THAT ARE ELIGIBLE AS A QUALIFIED PRODUCTION,**
15 point-of-purchase videos, and content created on film or digital
16 media, including, but not limited to, the duplication of films,
17 videos, compact discs, digital video discs, and digital files or
18 other digital media created for consumer consumption.

19 (II) Purchase of equipment relating to the duplication or
20 market distribution of any content created or produced in this
21 state.

22 (I) Other expenditures for production of a qualified
23 production in accordance with generally accepted entertainment
24 industry practices.

25 (ii) Payments and compensation, not to exceed \$2,000,000.00 **IN**
26 **2008 AND 2009 AND \$1,000,000.00 IN 2010 AND EACH YEAR THEREAFTER**
27 **for A PRODUCER OR** any 1 employee or contractual or salaried

1 employee who performs services in this state for the production or
2 distribution of a qualified production, including all of the
3 following:

4 (A) Payment of wages, benefits, or fees for talent,
5 management, or labor.

6 (B) Payment to a personal services corporation or professional
7 employer organization for the services of a performing artist or
8 crew member if the personal services corporation or professional
9 employer organization is subject to the tax levied under this act
10 on the portion of the payment qualifying for the tax credit under
11 this section and the payments received by the performing artist or
12 crew member that are subject to taxation under the income tax act
13 of 1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and
14 paid to this state in the amount provided under section 351 of the
15 income tax act of 1967, 1967 PA 281, MCL 206.351.

16 (d) "Eligible production company" or "company" means an entity
17 in the business of producing qualified productions, but does not
18 include an entity that is more than 30% owned, affiliated, or
19 controlled by an entity or individual who is in default on a loan
20 made by this state, a loan guaranteed by this state, or a loan made
21 or guaranteed by any other state.

22 (e) "Interactive website" means a website, the production
23 costs of which exceed \$500,000.00 in an annual period and primarily
24 includes interactive games, end user applications, animation,
25 simulation, sound, graphics, story lines, or video created or
26 repurposed for distribution over the internet. Interactive website
27 does not include a website primarily used for institutional,

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1 private, industrial, retail, or wholesale marketing or promotional
2 purposes, or which contains obscene matter or an obscene
3 performance.

4 (f) "Michigan film office" or "office" means the Michigan film
5 office created under chapter 2A of the Michigan strategic fund act,
6 1984 PA 270, MCL 125.2029 to 125.2029g.

7 (g) "Michigan film promotion fund" means the fund created
8 under chapter 2A of the Michigan strategic fund act, 1984 PA 270,
9 MCL 125.2029 to 125.2029g.

10 (h) "Obscene matter or an obscene performance" means matter
11 described in 1984 PA 343, MCL 752.361 to 752.374.

12 (i) "Postproduction expenditure" means a direct expenditure
13 for editing, Foley recording, automatic dialogue replacement, sound
14 editing, special or visual effects including computer-generated
15 imagery or other effects, scoring and music editing, beginning and
16 end credits, negative cutting, soundtrack production, dubbing,
17 subtitling, or addition of sound or visual effects. Postproduction
18 expenditure includes direct expenditures for advertising,
19 marketing, distribution, or related expenses.

20 (j) "Qualified personnel expenditure" means an expenditure
21 made in this state directly attributable to the production or
22 distribution of a qualified production that is a transaction
23 subject to taxation in this state and is a payment or compensation
24 payable to below the line crew for below the line crew members who
25 ~~<<were not ARE>>~~ residents of this state for at least ~~<<60-180>>~~ days
before
26 approval of the agreement for the qualified production under
27 subsection (3), not to exceed \$2,000,000.00 **IN 2008 AND 2009 AND**

1 **\$1,000,000.00 IN 2010 AND EACH YEAR THEREAFTER** for **A PRODUCER OR**
2 any 1 employee or contractual or salaried employee who performs
3 service in this state for the production of a qualified production,
4 including both of the following:

5 (i) Payment of wages, benefits, or fees.

6 (ii) Payment to a personal services corporation or professional
7 employer organization for the services of a performing artist or
8 crew member if the personal services corporation or professional
9 employer organization is subject to the tax levied under this act
10 on the portion of the payment qualifying for the tax credit under
11 this section and the payments received by the performing artist or
12 crew member that are subject to taxation under the income tax act
13 of 1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and
14 paid to this state in the amount provided under section 351 of the
15 income tax act of 1967, 1967 PA 281, MCL 206.351.

16 (k) "State certified qualified production" or "qualified
17 production" means single media or multimedia entertainment content
18 created in whole or in part in this state for distribution or
19 exhibition to the general public in 2 or more states by any means
20 and media in any digital media format, film, or video tape,
21 including, but not limited to, a motion picture, a documentary, a
22 television series, a television miniseries, a television special,
23 interstitial television programming, long-form television,
24 interactive television, music videos, interactive games, video
25 games, ~~commercials~~, internet programming, an internet video, a
26 sound recording, a video, digital animation, or an interactive
27 website. **QUALIFIED PRODUCTION ALSO INCLUDES A COMMERCIAL IF 75% OF**

1 **THE PRODUCTION OF THE COMMERCIAL TAKES PLACE IN THIS STATE.**

2 Qualified production also includes any trailer, pilot, video
3 teaser, or demo created primarily to stimulate the sale, marketing,
4 promotion, or exploitation of future investment in a production.

5 Qualified production does not include any of the following:

6 (i) A production for which records are required to be
7 maintained with respect to any performer in the production under 18
8 USC 2257.

9 (ii) A production that includes obscene matter or an obscene
10 performance.

11 (iii) A production that primarily consists of televised news or
12 current events.

13 (iv) A production that primarily consists of a live sporting
14 event.

15 (v) A production that primarily consists of political
16 advertising.

17 (vi) A radio program.

18 (vii) A weather show.

19 (viii) A financial market report.

20 (ix) A talk show.

21 (x) A game show.

22 (xi) A production that primarily markets a product or service
23 other than a state certified qualified production. **THIS EXCLUSION**
24 **DOES NOT INCLUDE A COMMERCIAL OTHERWISE ELIGIBLE AS A QUALIFIED**
25 **PRODUCTION UNDER THIS SUBDIVISION.**

26 (xii) An awards show or other gala event production.

27 (xiii) A production with the primary purpose of fund-raising.

1 (xiv) A production that primarily is for employee training or
2 in-house corporate advertising or other similar production.

3 (l) "Sound recording" means a recording of music, poetry, or
4 spoken-word performance, but does not include the audio portions
5 spoken and recorded as part of a motion picture, video, theatrical
6 production, television news coverage, or athletic event.

7 (m) "State certified qualified production" means a qualified
8 production for which a postproduction certificate **OF COMPLETION** has
9 been issued by the office under subsection (5).

10 Sec. 457. (1) Until September 30, 2015, the Michigan film
11 office, with the concurrence of the state treasurer, may enter into
12 an agreement with a taxpayer providing the taxpayer with a credit
13 against the tax imposed by this act for an investment in a
14 qualified film and digital media infrastructure project, as
15 provided under this section. To qualify for the credit under this
16 section, a taxpayer shall meet all of the following requirements:

17 (a) Before January 1, 2009, invest and expend at least
18 \$100,000.00 for a qualified film and digital media infrastructure
19 project in this state; after December 31, 2008, invest and expend
20 at least \$250,000.00 for a qualified film and digital media
21 infrastructure project in this state.

22 (b) Enter into an agreement as provided in this section.

23 (c) Receive an investment expenditure certificate from the
24 office under subsection (5).

25 (d) Submit the investment expenditure certificate issued by
26 the office under subsection (5) to the department under subsection
27 (7).

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1 (e) Shall not be delinquent in a tax or other obligation owed
2 to this state or be owned or under common control of an entity that
3 is delinquent in a tax or other obligation owed to this state.

4 (2) For investment expenditures made by a taxpayer for all
5 qualified film and digital media infrastructure projects in this
6 state, an agreement under this section may provide for the taxpayer
7 to claim a tax credit equal to ~~25%~~<<32%>> of the taxpayer's base
8 investment. The credit under this section shall be reduced by any
9 credit claimed by the taxpayer under section 437 for the same base
10 investment. No more than \$20,000,000.00 in total credits under this
11 section shall be authorized in a tax year. If all or a portion of a
12 qualified film and digital media infrastructure project is a
13 facility that may be used for purposes unrelated to production or
14 postproduction activities, then the project is eligible for the
15 credit only if the department determines that the facility will
16 support and be necessary to secure production or postproduction
17 activity for the production and postproduction facility and the
18 taxpayer agrees to both of the following:

19 (a) The facility will be used as a state of the art production
20 or postproduction facility or as support and component of the
21 facility for the useful life of the facility.

22 (b) A credit will not be claimed under this section until the
23 facility is complete.

24 (3) A taxpayer seeking a credit under this section may submit
25 an application to enter into an agreement under this section to the
26 Michigan film office. The application shall be submitted in a form
27 prescribed by the Michigan film office and shall be accompanied by

1 a \$100.00 application fee and all of the information and records
2 requested by the office. An application fee received by the office
3 under this subsection shall be deposited in the Michigan film
4 promotion fund. The office shall not process the application until
5 it is complete. If the office, with the concurrence of the state
6 treasurer, determines to enter into an agreement under this
7 section, the agreement shall provide for all of the following:

8 (a) A requirement that construction on the qualified film and
9 digital media infrastructure project commence within 180 days of
10 the date of the agreement or else the agreement shall expire.
11 However, upon request submitted by the taxpayer based on good
12 cause, the office may extend the period for commencement of work
13 for up to an additional 90 days.

14 (b) A unique number assigned to the qualified film and digital
15 media infrastructure project.

16 (c) A detailed description of the qualified film and digital
17 media infrastructure project.

18 (d) A detailed business plan and market analysis for the
19 qualified film and digital media infrastructure project.

20 (e) A projected budget for the qualified film and digital
21 media infrastructure project.

22 (f) Estimated start date and completion date for the qualified
23 film and digital media infrastructure project.

24 (g) A requirement that the taxpayer not file a claim for the
25 credit under this section until at least 25% of the base investment
26 in the qualified film and digital media infrastructure project
27 identified in the agreement has been expended.

1 (h) A requirement that the taxpayer provide the office with
2 the information and independent certification the office and the
3 department deem necessary to verify investment expenditures and
4 eligibility for the credit under this section.

5 (i) A requirement that if the cost of tangible assets
6 described in subsection (11)(a) was paid or accrued in a tax year
7 beginning after December 31, 2007, the taxpayer shall repay an
8 amount equal to 25% of the gross proceeds or benefit derived from
9 the sale or other disposition of the tangible assets minus the
10 gain, multiplied by the apportionment factor for the taxable year
11 as prescribed in chapter 3, and plus the loss, multiplied by the
12 apportionment factor for the taxable year as prescribed in chapter
13 3 from the sale or other disposition reflected in federal taxable
14 income and minus the gain from the sale or other disposition added
15 to the business income tax base in section 201.

16 (4) In determining whether to enter into an agreement under
17 this section, the Michigan film office and the state treasurer
18 shall consider all of the following:

19 (a) The potential that in the absence of the credit the
20 qualified film and digital media infrastructure project will be
21 constructed in a location other than this state.

22 (b) The extent to which the qualified film and digital media
23 infrastructure project may have the effect of promoting economic
24 development or job creation in this state.

25 (c) The extent to which the credit will attract private
26 investment for the production of motion pictures, videos,
27 television programs, and digital media in this state.

1 (d) The extent to which the credit will encourage the
2 development of film, video, television, and digital media
3 production and postproduction facilities in this state.

4 (5) If the Michigan film office determines that a taxpayer has
5 complied with the terms of an agreement entered into under this
6 section, the office shall issue an investment expenditure
7 certificate to the taxpayer. The taxpayer shall submit a request to
8 the office for an investment expenditure certificate on a form
9 prescribed by the office, along with any information or independent
10 certification the office or the department deems necessary. The
11 office shall process each request within 60 days after the request
12 is complete. However, the office may request additional information
13 or independent certification before issuing an investment
14 expenditure certificate and need not issue the investment
15 expenditure certificate until satisfied that investment
16 expenditures and eligibility are adequately established. The
17 additional information requested may include a report of
18 expenditures audited and certified by an independent certified
19 public accountant. Each investment expenditure certificate shall be
20 signed by the Michigan film commissioner and shall include the
21 following information:

22 (a) The name of the taxpayer.

23 (b) A description of the qualified film and digital media
24 infrastructure project.

25 (c) The taxpayer's eligible investment expenditures for the
26 qualified film and digital media infrastructure project.

27 (d) The unique number assigned to the qualified film and

1 digital media infrastructure project by the office under subsection
2 (3).

3 (e) The taxpayer's federal employer identification number or
4 Michigan treasury number.

5 (f) Any independent certification required by the department
6 or the Michigan film office.

7 (6) Information, records, or other data received, prepared,
8 used, or retained by the Michigan film office under this section
9 that are submitted by an eligible production company and considered
10 by the taxpayer and acknowledged by the office as confidential
11 shall not be subject to the disclosure requirements of the freedom
12 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,
13 records, or other data shall only be considered confidential to the
14 extent that the information or records describe the commercial and
15 financial operations or intellectual property of the company, the
16 information or records have not been publicly disseminated at any
17 time, and disclosure of the information or records may put the
18 company at a competitive disadvantage.

19 (7) To claim a credit under this section, a taxpayer shall
20 submit an investment expenditure certificate issued under
21 subsection (5) to the department. If the credit allowed under this
22 section exceeds the amount of taxes owed by the taxpayer under this
23 act for a tax year, that portion of the credit that exceeds the tax
24 liability of the taxpayer for the tax year shall not be refunded
25 but may be carried forward to offset tax liability under this act
26 in subsequent tax years for a period not to exceed 10 tax years or
27 until used up, whichever occurs first.

1 (8) The credit under this section shall be claimed after all
2 other credits under this act. A taxpayer eligible to claim a credit
3 under this section may assign all or a portion of a credit under
4 this section to any assignee. An assignee may subsequently assign a
5 credit or any portion of a credit assigned under this subsection to
6 1 or more assignees. A taxpayer may claim a portion of a credit and
7 assign the remaining credit amount. A credit assignment under this
8 subsection is irrevocable. The credit assignment under this
9 subsection shall be made on a form prescribed by the department. A
10 taxpayer claiming a credit under this section shall send a copy of
11 the completed assignment form to the department in the tax year in
12 which the assignment is made and shall attach a copy of the form to
13 the return on which the credit is claimed.

14 (9) The amount of the credit under this section shall be
15 reduced by a credit application and redemption fee equal to 0.5% of
16 the credit claimed, which shall be deducted from the credit
17 otherwise payable to the taxpayer claiming the credit and be
18 deposited by the department in the Michigan film promotion fund.

19 (10) A taxpayer that willfully submits information under this
20 section that the taxpayer knows to be fraudulent or false shall, in
21 addition to any other penalties provided by law, be liable for a
22 civil penalty equal to the amount of the taxpayer's credit under
23 this section. A penalty collected under this section shall be
24 deposited in the Michigan film production promotion fund.

25 (11) As used in this section:

26 (a) "Base investment" means the cost, including fabrication
27 and installation, paid or accrued in the taxable year of tangible

1 assets of a type that are, or under the internal revenue code will
2 become, eligible for depreciation, amortization, or accelerated
3 capital cost recovery for federal income tax purposes, provided
4 that the assets are physically located in this state for use in a
5 business activity in this state and are not mobile tangible assets
6 expended by a person in the development of a qualified film and
7 digital media infrastructure project. Base investment does not
8 include a direct production expenditure or qualified personnel
9 expenditure eligible for a credit under section 455.

10 (b) "Michigan film office" or "office" means the Michigan film
11 office created under chapter 2A of the Michigan strategic fund act,
12 1984 PA 270, MCL 125.2029 to 125.2029g.

13 (c) "Michigan film promotion fund" means the fund created
14 under chapter 2A of the Michigan strategic fund act, 1984 PA 270,
15 MCL 125.2029 to 125.2029g.

16 (d) "Qualified film and digital media infrastructure project"
17 means a film, video, television, or digital media production and
18 postproduction facility located in this state, movable and
19 immovable property and equipment related to the facility, and any
20 other facility that is a necessary component of the primary
21 facility. A qualified film and digital media infrastructure project
22 does not include a movie theater or other commercial exhibition
23 facility, a facility used to produce obscene matter or an obscene
24 performance as described in 1984 PA 343, MCL 752.361 to 752.374, or
25 a facility used for a production for which records are required to
26 be maintained with respect to any performer in the production under
27 18 USC 2257.

1 Sec. 515. (1) In fiscal year 2007-2008, \$341,000,000.00 of the
2 revenue collected under this act shall be distributed to the school
3 aid fund and the balance shall be deposited into the general fund.
4 In fiscal year 2008-2009, \$729,000,000.00 of the revenue collected
5 under this act shall be distributed to the school aid fund and the
6 balance shall be deposited into the general fund. For each fiscal
7 year after the 2008-2009 fiscal year, that amount from the
8 immediately preceding fiscal year as adjusted by an amount equal to
9 the growth in the United States consumer price index in the
10 immediately preceding year shall be distributed to the school aid
11 fund and the balance shall be deposited into the general fund.

12 **(2) IN ADDITION TO THE DISTRIBUTION REQUIRED UNDER SUBSECTION**
13 **(1), IN FISCAL YEAR 2009-2010, \$100,000,000.00 OF THE REVENUE**
14 **COLLECTED UNDER THIS ACT SHALL BE DISTRIBUTED TO THE SCHOOL AID**
15 **FUND.**

16 **(3) ~~(2)~~**As used in this section, "United States consumer price
17 index" means the United States consumer price index for all urban
18 consumers as defined and reported by the United States department
19 of labor, bureau of labor statistics.

20 Enacting section 1. (1) Section 111 of the Michigan business
21 tax act, 2007 PA 36, MCL 208.1111, as amended by this amendatory
22 act, is retroactive and effective for tax years that begin after
23 December 31, 2007.

24 (2) Sections 281 and 515 of the Michigan business tax act,
25 2007 PA 36, MCL 208.1281 and 208.1515, as amended by this
26 amendatory act, are retroactive and effective for taxes levied
27 after September 30, 2009.

Senate Bill No. 838 as amended October 9, 2009

1 (3) ~~<<Sections 403, 405, and Section>>~~ 441 of the Michigan
business tax

2 act, 2007 PA 36, MCL ~~<<208.1403, 208.1405, and>>~~ 208.1441, as amended
3 by this amendatory act, ~~<<are-is>>~~ retroactive and effective for tax
years
4 that begin after December 31, 2008.

5 (4) Sections ~~<<413,>>~~ 417, 437, 455, and 457 of the Michigan
6 business tax act, 2007 PA 36, MCL ~~<<208.1413,>>~~ 208.1417, 208.1437,
7 208.1455, and 208.1457, as amended by this amendatory act, are
8 effective for tax years that begin after December 31, 2009.

9 Enacting section 2. This amendatory act does not take effect
10 unless all of the following bills of the 95th Legislature are
11 enacted into law:

12 (a) Senate Bill No. 1.

13 (b) Senate Bill No. 69.

14 (c) House Bill No. 4514.