MICHIGAN BUSINESS TAX ACT

Public Act 36 of 2007

Approved by the Governor, July 12, 2007

Effective, January 1, 2008

AS AMENDED

Since the enactment of the Michigan Business Tax Act, PA 36 of 2007, there has been sixty separate bill amendments to the original statute. The following publication of the Michigan Business Tax Act is current as of January 1, 2010. Any research should include amendments subsequent to October 1, 2010.

MICHIGAN BUSINESS TAX ACT

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MICHIGAN BUSINESS TAX ACT

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

The People of the State of Michigan enact:

CHAPTER 1

Section 101. MCL 208.1101 Short title; legislative intent.

(1) This act shall be known and may be cited as the "Michigan Business Tax Act".

(2) It is the intent of the legislature that the tax levied under this act and the various credits available under this act will serve to improve the economic condition of this state, foster continued and diverse economic growth in this state, and enable this state to compete fairly and effectively in the world marketplace for economic development opportunities that will provide for and protect the health, safety, and welfare of the citizens of this state, now and in the future.

Section 103. MCL 208.1103 Terms; meanings and references.

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

Section 105. MCL 208.1105 Definitions; "B".

(1) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer or services as a director of a corporation. Although an activity of a taxpayer may be incidental to another or to other of his or her

business activities, each activity shall be considered to be business engaged in within the meaning of this act.

(2) "Business income" means that part of federal taxable income derived from business activity. For a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the partners or shareholders. For an organization that is a mutual or cooperative electric company exempt under section 501(c)(12) of the internal revenue code, business income equals the organization's excess or deficiency of revenues over expenses as reported to the federal government by those organizations exempt from the federal income tax under the internal revenue code, less capital credits paid to members of that organization, less income attributed to equity in another organization's net income, and less income resulting from a charge approved by a state or federal regulatory agency that is restricted for a specified purpose and refundable if it is not used for the specified purpose. For a tax-exempt person, business income means only that part of federal taxable income derived from unrelated business activity. For an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes, business income is that part of federal taxable income derived from transactions, activities, and sources in the regular course of the taxpayer's trade or business, including the following:

(a) All income from tangible and intangible property if the acquisition, rental, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(b) Gains or losses incurred in the taxpayer's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.

(c) Income derived from isolated sales, leases, assignment, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving property if the property is or was used in the taxpayer's trade or business operation.

(d) Income derived from the sale of a business.

(e) Income not included in business income for an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes includes, but is not limited to, the following:

i. Personal investment activity, including interest, dividends, and gains from a personal investment portfolio or retirement account.

ii. Disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

Section 107. MCL 208.1107 Definitions; "C" and "D".

(1) "Client" means an entity whose employment operations are managed by a professional employer organization.

(2) "Compensation" means all wages, salaries, fees, bonuses, commissions, other payments made in the tax year on behalf of or for the benefit of employees, officers, or directors of the taxpayers, and any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to a pension, retirement, or profit sharing plan other than those payments attributable to unfunded accrued actuarial liabilities, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payment of fees for the administration of health and welfare and noninsured benefit plans. Compensation for a taxpayer licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637, includes payments to an independent contractor licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637. Compensation does not include any of the following:

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

   (b) Except as otherwise provided in this subsection, payments to an independent contractor.

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

   (d) The employer's portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233, and similar social insurance programs.

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

(3) "Corporation" means a taxpayer that is required or has elected to file as a corporation under the internal revenue code.

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

Section 109. MCL 208.1109 Definitions; "E" and "F".

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

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

(3) "Federal taxable income" means taxable income as defined in section 63 of the internal revenue code, except that federal taxable income shall be calculated as if section 168(k) and section 199 of the internal revenue code were not in effect.

(4) "Financial institution" means that term as defined under chapter 2B.

(5) "Foreign operating entity" means a United States person that satisfies each of the following:

(a) Would otherwise be a part of a unitary business group that has at least 1 person included in the unitary business group that is taxable in this state.

(b) Has substantial operations outside the United States, the District of Columbia, any territory or possession of the United States except for the Commonwealth of Puerto Rico, or a political subdivision of any of the foregoing.

(c) At least 80% of its income is active foreign business income as defined in section 861(c)(1)(B) of the internal revenue code.

Section 111. MCL 208.1111 Definitions; "G" to "O".

(1) "Gross receipts" means the entire amount received by the taxpayer as determined by using the taxpayer's method of accounting used for federal income tax purposes, less any amount deducted as bad debt for federal income tax purposes that corresponds to items of gross receipts included in the modified gross receipts tax base for the current tax year or a past tax year phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter, from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others except for the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Proceeds from any of the following:

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

i. The original issue of debt instruments.

vii. Refunds from returned merchandise.

(j) Cash and in-kind discounts.

(k) Trade discounts.

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

(m) Security deposits.

(n) Payment of the principal portion of loans.

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

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

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

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

viii. The property is used in a hedging transaction entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily to manage the risk of exposure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; interest rate fluctuations; or commodity price fluctuations for purposes of this subparagraph, the actual transfer of title of real or tangible personal property to another person is not a hedging transaction. Only the overall net gain from the hedging transactions entered into during the tax year is included in gross receipts. As used in this subparagraph, "hedging transaction" means that term as defined under section 1221 of the internal revenue code regardless of whether the transaction was identified by the taxpayer as a hedge for federal income tax purposes, provided, however, that transactions excluded under this subparagraph and not identified as a hedge for federal income tax

purposes shall be identifiable to the department by the taxpayer as a hedge in its books and records.

ix. The property is investment and trading assets managed as part of the person's treasury function for purposes of this subparagraph, a person principally engaged in the trade or business of purchasing and selling investment and trading assets is not performing a treasury function. Only the overall net gain from the treasury function incurred during the tax year is included in gross receipts. As used in this subparagraph, "treasury function" means the pooling and management of investment and trading assets for the purpose of satisfying the cash flow or liquidity needs of the taxpayer's trade or business.

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

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

(s) For a sales finance company, as defined in section 2 of the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102, and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, and for a person that is a broker or dealer as defined under section 78c(a)(4) or (5) of the securities exchange act of 1934, 15 USC 78c, or a person included in the unitary business group of that broker or dealer that buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, the principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

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

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

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

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

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

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

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

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

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

E. Receipts derived from the lease or rental of real property.

ii. Receipts excluded from gross receipts include, but are not limited to, the following:

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

B. Receipts derived from the disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

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

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

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

(aa) To the extent not deducted as purchases from other firms under section 203, each of the following:

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

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

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

iv. in the case of receipts from the sale of beer, wine, or intoxicating liquor by a person holding a license to sell, distribute, or produce those products, an amount equal to federal and state excise taxes paid by any person on or for such beer, wine, or intoxicating liquor under subtitle e of the internal revenue code or other applicable state law, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

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

vi. in the case of receipts from the sale of electricity, natural gas, or other energy source, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, ordinance, regulation, ruling, or other legal authority and authorized to be charged on a customer's bill or invoice, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter. this subparagraph does not include the recovery of net income taxes, net worth taxes, property taxes, or the tax imposed under this act.

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

A. 1976 Il 1, MCL 445.571 to 445.576.

B. R 436.1629 of the Michigan administrative code.

C. R 436.1723a of the Michigan administrative code.

D. any substantially similar beverage container deposit law of another state.

viii. an excise tax collected pursuant to the airport parking tax act, 1987 pa 248, MCL 207.371 to 207.383, collected from or reimbursed by a consumer and remitted as provided in the airport parking tax act, 1987 pa 248, MCL 207.371 to 207.383, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

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

i. "cooperative corporation" means those organizations described under subchapter t of the internal revenue code.

ii. "pass-through" entity means a partnership, subchapter S corporation, or other person, other than an individual, that is not classified for federal income tax purposes as an association taxed as a corporation.

iii. "real estate investment trust" means that term as defined under section 856 of the internal revenue code.

iv. "regulated investment company" means that term as defined under section 851 of the internal revenue code.

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

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

(ee) for a taxpayer that provides health care management consulting services, amounts received by the taxpayer as fees from its clients that are expended by the taxpayer to reimburse those clients for labor and nonlabor services that are paid by the client and reimbursed to the client pursuant to a services agreement.

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

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

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

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

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

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

(d) For a person that is a securities trader, broker, or dealer or a person included in the unitary business group of that securities trader, broker, or dealer that buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, the cost of securities as defined under section 475(c)(2) of the internal revenue code and for a securities trader the cost of commodities as defined under section 475(e)(2) and for a broker or dealer the cost of commodities as defined under section 475(e)(2)(b), (c), and (d) of the internal revenue code, excluding interest expense other than interest expense related to repurchase agreements as used in this subdivision:

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

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

iii. "Securities Trader" means a person that engages in the trade or business of purchasing and selling investments and trading assets.

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

i. Personal property under lease or principally intended for lease rather than sale.

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

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

(a) The chairperson of the board.

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

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

Section 113. MCL 208.1113 Definitions; "P" and "R".

(1) "Partner" means a partner or member of a partnership.

(2) "Partnership" means a taxpayer that is required to or has elected to file as a partnership for federal income tax purposes.

(3) "Person" means an individual, firm, bank, financial institution, insurance company, limited partnership, limited liability partnership, copartnership, partnership, joint venture, association, corporation, subchapter S corporation, limited liability company, receiver, estate, trust, or any other group or combination of groups acting as a unit.

(4) "Professional employer organization" means an organization that provides the management and administration of the human resources of another entity by contractually assuming substantial employer rights and responsibilities through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

(a) Maintaining a right of direction and control of employees' work, although this responsibility may be shared with the other entity.

(b) Paying wages and employment taxes of the employees out of its own accounts.

(c) Reporting, collecting, and depositing state and federal employment taxes for the employees.

(d) Retaining a right to hire and fire employees.

(5) Professional employer organization is not a staffing company as that term is defined in subsection (6).

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

(a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.

(b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.

(c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.

(d) For a staffing company, compensation of personnel supplied to customers of staffing companies. As used in this subdivision:

i. "Compensation" means that term as defined under section 107 plus all payroll tax and worker's compensation costs.

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

(e) For a person included in major group 15, 16, or 17 under the standard industrial classification code as compiled by the United States department of labor that does not qualify for a credit under section 417, both of the following:

i. Payments to subcontractors for a construction project under a contract specific to that project.

ii. To the extent not deducted under subdivisions (a) and (c), payments for materials deducted as purchases in determining the cost of goods sold for the purpose of calculating total income on the taxpayer's federal income tax return.

(f) For the 2008 tax year and each tax year after 2008, all film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.

(g) For a taxpayer licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637, payments to an independent contractor licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637.

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

Section 115. MCL 208.1115 Definitions; "S".

(1) "Sale" or "sales" means, except as provided in subdivision (e), the amounts received by the taxpayer as consideration from the following:

(a) The transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. For intangible property, the amounts received shall be limited to any gain received from the disposition of that property.

(b) The performance of services that constitute business activities.

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

(d) Any combination of business activities described in subdivisions (a), (b), and (c).

(e) For taxpayers not engaged in any other business activities, sales include interest, dividends, and other income from investment assets and activities and from trading assets and activities.

(2) "Shareholder" means a person who owns outstanding stock in a business or is a member of a business entity that files as a corporation for federal income tax purposes. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the internal revenue code.

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

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

Section 117. MCL 208.1117 Definitions; "T" and "U".

(1) "Tangible personal property" means that term as defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

(2) "Tax" means the tax imposed under this act, including interest and penalties under this act, unless the term is given a more limited meaning in the context of this act or a provision of this act.

(3) "Tax-exempt person" means an organization that is exempt from federal income tax under section 501(a) of the internal revenue code, and a partnership, limited liability company, joint venture, unincorporated association, or other group or combination of organizations acting as a unit if all such organizations are exempt from federal income tax under section 501(a) of the internal revenue code and if all activities of the unit are exclusively related to the charitable, educational, or other purposes or functions that are the basis for the exemption of such organizations from federal income tax, except the following:

(a) An organization exempt under section 501(c)(12) or (16) of the internal revenue code.

(b) An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section 501(c)(12) of the internal revenue code but for its failure to meet the requirement in section 501(c)(12) that 85% or more of its income must consist of amounts collected from members.

(4) "Tax year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this act. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act, a taxpayer's tax year is for the same period as is covered by its federal income tax return. A taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December of that tax year. If the term tax year in this act is used in reference to 1 or more previous or preceding tax years and those referenced tax years are before January 1, 2008, then those referenced tax years are deemed those same tax years during which former 1975 PA 228 was in effect.

(5) "Taxpayer" means a person or a unitary business group liable for a tax, interest, or penalty under this act.

(6) "Unitary business group" means a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations.

(7) “United States person” means that term as defined in section 7701(a)(30) of the internal revenue code.

(8) “Unrelated business activity” means, for a tax-exempt person, business activity directly connected with an unrelated trade or business as defined in section 513 of the internal revenue code.

CHAPTER 2

Section 200. MCL 208.1200 Taxpayer; nexus to state; "actively solicits" and "physical presence" defined.

(1) Except as otherwise provided in this act or under subsection (2), a taxpayer has substantial nexus in this state and is subject to the tax imposed under this act if the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year or if the taxpayer actively solicits sales in this state and has gross receipts of $350,000.00 or more sourced to this state.

(2) For purposes of this section, "actively solicits" shall be defined by the department through written guidance that shall be applied prospectively.

(3) As used in this section, "physical presence" means any activity conducted by the taxpayer or on behalf of the taxpayer by the taxpayer's employee, agent, or independent contractor acting in a representative capacity. Physical presence does not include the activities of professionals providing services in a professional capacity or other service providers if the activity is not significantly associated with the taxpayer's ability to establish and maintain a market in this state.

Section 201. MCL 208.1201 Taxpayer; nexus to state; "actively solicits" and "physical presence" defined.

(1) Except as otherwise provided in this act, there is levied and imposed a business income tax on every taxpayer with business activity within this state unless prohibited by 15 USC 381 to 384. The business income tax is imposed on the business income tax base, after allocation or apportionment to this state, at the rate of 4.95%.

(2) The business income tax base means a taxpayer’s business income subject to the following adjustments, before allocation or apportionment, and the adjustments in subsections (5), (6), and (7) after allocation or apportionment:

(a) Add interest income and dividends derived from obligations or securities of states other than this state, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

(b) Add all taxes on or measured by net income and the tax imposed under this act to the extent the taxes were deducted in arriving at federal taxable income.

(c) Add any carryback or carryover of a net operating loss to the extent deducted in arriving at federal taxable income.

(d) To the extent included in federal taxable income, deduct dividends and royalties received from persons other than United States persons and foreign operating

entities, including, but not limited to, amounts determined under section 78 of the internal revenue code or sections 951 to 964 of the internal revenue code.

(e) To the extent included in federal taxable income, add the loss or subtract the income from the business income tax base that is attributable to another entity whose business activities are taxable under this section or would be subject to the tax under this section if the business activities were in this state.

(f) Except as otherwise provided under this subdivision, to the extent deducted in arriving at federal taxable income, add any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group. The addition of any royalty, interest, or other expense described under this subdivision is not required to be added if the taxpayer can demonstrate that the transaction has a nontax business purpose other than avoidance of this tax, is conducted with arm's-length pricing and rates and terms as applied in accordance with sections 482 and 1274(d) of the internal revenue code, and satisfies 1 of the following:

i. Is a pass through of another transaction between a third party and the related person with comparable rates and terms.

ii. Results in double taxation. For purposes of this subparagraph, double taxation exists if the transaction is subject to tax in another jurisdiction.

iii. Is unreasonable as determined by the treasurer, and the taxpayer agrees that the addition would be unreasonable based on the taxpayer's facts and circumstances.

iv. The related person recipient of the transaction is organized under the laws of a foreign nation which has in force a comprehensive income tax treaty with the United States.

(g) To the extent included in federal taxable income, deduct interest income derived from United States obligations.

(h) To the extent included in federal taxable income, deduct any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer except to the extent that those net earnings represent a reasonable return on capital.

(i) Subject to the limitation provided under this subdivision, if the book-tax differences for the first fiscal period ending after July 12, 2007 result in a deferred liability for a person subject to tax under this act, deduct the following percentages of the total book-tax difference for each qualifying asset, for each of the successive 15 tax years beginning with the 2015 tax year:

i. For the 2015 through 2019 tax years, 4%.

ii. For the 2020 through 2024 tax years, 6%.

iii. For the 2025 through 2029 tax years, 10%.

(j) For tax years that begin after December 31, 2009, to the extent included in federal taxable income, deduct the amount of a charitable contribution made to the advance tuition payment fund created under section 9 of the Michigan education trust act, 1986 PA 316, MCL 390.1429.

(3) The deduction under subsection (2)(i) shall not exceed the amount necessary to offset the net deferred tax liability of the taxpayer as computed in accordance with generally accepted accounting principles which would otherwise result from the imposition of the business income tax under this section and the modified gross receipts tax under section 203 if the deduction provided under this subdivision were not allowed. The deduction under subsection (2)(i) is intended to flow through and reduce the surcharge imposed and levied under section 281. For purposes of the calculation of the deduction under subsection (2)(i), a book-tax difference shall only be used once in the calculation of the deduction arising from the taxpayer's business income tax base under this section and once in the calculation of the deduction arising from the taxpayer's modified gross receipts tax base under section 203. The adjustment under subsection (2)(i) shall be calculated without regard to the federal effect of the deduction. If the adjustment under subsection (2)(i) is greater than the taxpayer's business income tax base, any adjustment that is unused may be carried forward and applied as an adjustment to the taxpayer's business income tax base before apportionment in future years. In order to claim this deduction, the department may require the taxpayer to report the amount of this deduction on a form as prescribed by the department that is to be filed on or after the date that the first quarterly return and estimated payment are due under this act. As used in subsection (2)(i) and this subsection:

(a) "Book-tax difference" means the difference, if any, between the person's qualifying asset's net book value shown on the person's books and records for the first fiscal period ending after July 12, 2007 and the qualifying asset's tax basis on that same date.

(b) "Qualifying asset" means any asset shown on the person's books and records for the first fiscal period ending after July 12, 2007, in accordance with generally accepted accounting principles.

(4) For purposes of subsections (2) and (3), the business income of a unitary business group is the sum of the business income of each person, other than a foreign operating entity or a person subject to the tax imposed under chapter 2A or 2B, included in the unitary business group less any items of income and related deductions arising from transactions including dividends between persons included in the unitary business group.

(5) Deduct any available business loss incurred after December 31, 2007. As used in this subsection, "business loss" means a negative business income taxable amount after allocation

or apportionment. The business loss shall be carried forward to the year immediately succeeding the loss year as an offset to the allocated or apportioned business income tax base, then successively to the next 9 taxable years following the loss year or until the loss is used up, whichever occurs first, but for not more than 10 taxable years after the loss year.

(6) Deduct any gain from the sale of any residential rental units in this state to a qualified affordable housing project that enters an agreement to operate the residential rental units as rent restricted units for a minimum of 15 years. If the qualified affordable housing project does not agree to operate all of the residential rental units as rent restricted units, the deduction under this subsection is limited to an amount equal to the gain from the sale multiplied by a fraction, the numerator of which is the number of those residential rental units purchased that are to be operated as a rent restricted unit and the denominator is the number of all residential rental units purchased. In order to claim this deduction, the department may require the taxpayer and the qualified affordable housing project to report the amount of this deduction on a form as prescribed by the department that is to be signed by both the taxpayer and the qualified affordable housing project and filed with the taxpayer's annual return. The department shall record a lien against the property subject to the operation agreement for the total amount of the deduction allowed under this subsection. The department shall notify the qualified affordable housing project of the maximum amount of the lien that the qualified affordable housing project may be liable for if the qualified affordable housing project fails to qualify and operate as provided in the operation agreement within 15 years after the purchase. The lien shall become payable in an amount as provided under this subsection to the state by the qualified affordable housing project if the qualified affordable housing project fails to qualify as a qualified affordable housing project and fails to operate all or some of the residential rental units as rent restricted units in accordance with the operation agreement entered upon the purchase of those units within 15 years after the deduction is claimed by a taxpayer under this subsection. An amount equal to the product of 100% of the amount of the deduction allowed under this subsection multiplied by a fraction, the numerator of which is the difference between 15 and the number of years the affordable housing project qualified and operated rent restricted units in accordance with the agreement and the denominator is 15, shall be added back to the tax liability of the qualified affordable housing project for the tax year that the qualified affordable housing project fails to comply with the agreement.

(7) Subject to the limitations provided in this subsection, for a person that is a qualified affordable housing project, deduct an amount equal to the product of that person's taxable income that is attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in this state owned by that qualified affordable housing project and the denominator of which is the number of all residential rental units in this state owned by the qualified affordable housing project. The amount of the deduction calculated under this subsection shall be reduced by the amount of limited dividends or other distributions made to the partners, members, or shareholders of the qualified affordable housing project. Taxable income that is attributable to residential rental units does not include income received by the management, construction, or development company for completion and operation of the project and those rental units.

(8) If a qualified affordable housing project no longer meets the requirements of subsection (9)(b) or fails to operate those residential rental units as rent restricted units in accordance with the operation agreement and the requirements of subsection (9)(c), the taxpayer is entitled to the deductions under subsections (6) and (7) as long as the qualified affordable housing project continues to offer some of the residential rental units purchased as rent restricted units in accordance with the operation agreement.

(9) For purposes of subsections (6), (7), and (8) and this subsection:

(a) "Limited dividend housing association" means a limited dividend housing association, corporation, or cooperative organized and qualified pursuant to chapter 7 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1491 to 125.1496.

(b) "Qualified affordable housing project" means a person that is organized, qualified, and operated as a limited dividend housing association that has a limitation on the amount of dividends or other distributions that may be distributed to its owners in any given year and has received funding, subsidies, grants, operating support, or construction or permanent funding through 1 or more of the following sources and programs:

i. Mortgage or other financing provided by the Michigan state housing development authority created in section 21 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1421, the United States department of housing and urban development, the United States department of agriculture for rural housing service, the Michigan interfaith housing trust fund, Michigan housing and community development fund, federal home loan bank, housing commission loan, community development financial institution, or mortgage or other funding or guaranteed by Fannie, Ginnie, federal housing association, United States department of agriculture, or federal home loan mortgage corporation.

ii. A tax-exempt bond issued by a nonprofit organization, local governmental unit, or other authority.

iii. A payment in lieu of tax agreement or other tax abatement.

iv. Funding from the state or a local governmental unit through a HOME investments partnership program authorized under 42 USC 12741 to 12756.

v. A grant or other funding from a federal home loan bank's affordable housing program.

vi. Financing or funding under the new markets tax credit program under section 45D of the internal revenue code.

vii. Financed in whole or in part under the United States department of housing and urban development's hope VI program as authorized by section 803 of the national affordable housing act, 42 USC 8012.

viii. Financed in whole or in part under the United States department of housing and urban development's section 202 program authorized by section 202 of the national housing act, 12 USC 1701q.

ix. Financing or funding under the low-income housing tax credit program under section 42 of the internal revenue code.

x. Financing or other subsidies from any new programs similar to any of the above.

(c) "Rent restricted unit" means any residential rental unit's rental income is restricted in accordance with section 42(g)(1) of the internal revenue code as if it was a qualified low-income housing project, or receives rental assistance in the form of HUD section 8 subsidies or HUD housing assistance program subsidies, or rental assistance from the United States department of agriculture rural housing programs, or from any of the other programs described under subdivision (b).

Section 203. MCL 208.1203 Modified Gross Receipts Tax. Modified gross receipts tax; levy; imposition; "modified gross receipts tax base" explained; deduction; remittance; residential rental units; definitions.

(1) Except as otherwise provided in this act, there is levied and imposed a modified gross receipts tax on every taxpayer with nexus as determined under section 200. The modified gross receipts tax is imposed on the modified gross receipts tax base, after allocation or apportionment to this state at a rate of 0.80%.

(2) The tax levied and imposed under this section is upon the privilege of doing business and not upon income or property.

(3) The modified gross receipts tax base means a taxpayer's gross receipts subject to the adjustment in subsection(6), if applicable, less purchases from other firms before apportionment under this act. The modified gross receipts of a unitary business group is the sum of modified gross receipts of each person, other than a foreign operating entity or a person subject to the tax imposed under chapter 2A or 2B, included in the unitary business group less any modified gross receipts arising from transactions between persons included in the unitary business group.

(4) For the 2008 tax year, deduct 65% of any remaining business loss carryforward calculated under section 23b(h) of former 1975 PA 228 that was actually incurred in the 2006 or 2007 tax year to the extent not deducted in tax years beginning before January 1, 2008. A deduction under this subsection shall not include any business loss carryforward that was incurred before January 1, 2006. If the taxpayer is a unitary business group, the business loss carryforward under this subsection may only be deducted against the modified gross receipts

tax base of that person included in the unitary business group calculated as if the person was not included in the unitary business group.

(5) Nothing in this act shall prohibit a taxpayer who qualifies for the credit under section 445 or a taxpayer who is a dealer of new or used personal watercraft from collecting the tax imposed under this section in addition to the sales price. The amount remitted to the department for the tax under this section shall not be less than the stated and collected amount.

(6) Subject to the limitations provided in this subsection, for a person that is a qualified affordable housing project, deduct an amount equal to that person's total gross receipts attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in this state owned by the qualified affordable housing project and the denominator of which is the number of all rental units in this state owned by the qualified affordable housing project. The amount of the deduction calculated under this subsection shall be reduced by the amount of limited dividends or other distributions made to the partners, members, or shareholders of the qualified affordable housing project. Gross receipts attributable to residential rental units do not include amounts received by the management, construction, or development company for completion and operation of the project and those rental units.

(7) If a qualified affordable housing project no longer meets the requirements of subsection (8)(b) or fails to operate those residential rental units as rent restricted units in accordance with the operation agreement and the requirements of subsection (8)(c), the qualified affordable housing project is entitled to the deduction under subsection (6) as long as the qualified affordable housing project continues to offer some of the residential rental units purchased as rent restricted units in accordance with the operation agreement.

(8) For purposes of subsections (6) and (7) and this subsection:

(a) "Limited dividend housing association" means a limited dividend housing association, corporation, or cooperative organized and qualified pursuant to chapter 7 of the state housing development authority act of 1966, 1966 PA 346, MCL125.1491 to 125.1496.

(b) "Qualified affordable housing project" means a person that is organized, qualified, and operated as a limited dividend housing association that has a limitation on the amount of dividends or other distributions that may be distributed to its owners in any given year and has received funding, subsidies, grants, operating support, or construction or permanent funding through 1 or more of the following sources and programs:

i. Mortgage or other financing provided by the Michigan state housing development authority created in section 21 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1421, the United States department of housing and urban development, the United States department of agriculture for rural housing service, the Michigan interfaith housing trust fund, Michigan housing and community

development fund, federal home loan bank, housing commission loan, community development financial institution, or mortgage or other funding or guaranteed by Fannie, Ginnie, federal housing association, United States department of agriculture, or federal home loan mortgage corporation.

ii. A tax-exempt bond issued by a nonprofit organization, local governmental unit, or other authority.

iii. A payment in lieu of tax agreement or other tax abatement.

iv. Funding from the state or a local governmental unit through a HOME investments partnership program authorized under 42 USC 12741 to 12756.

v. A grant or other funding from a federal home loan bank's affordable housing program.

vi. Financing or funding under the new markets tax credit program under section 45D of the internal revenue code.

vii. Financed in whole or in part under the United States department of housing and urban development's hope VI program as authorized by section 803 of the national affordable housing act, 42 USC 8012.

viii. Financed in whole or in part under the United States department of housing and urban development's section202 program authorized by section 202 of the national housing act, 12 USC 1701q.

ix. Financing or funding under the low-income housing tax credit program under section 42 of the internal revenue code.

x. Financing or other subsidies from any new programs similar to any of the above.

(c) "Rent restricted unit" means any residential rental unit's rental income is restricted in accordance with section42(g)(1) of the internal revenue code as if it was a qualified low-income housing project, or receives rental assistance in the form of HUD section 8 subsidies or HUD housing assistance program subsidies, or rental assistance from the United States department of agriculture rural housing programs, from any of the other programs described under subdivision (b).

Section 207. MCL 208.1207 Exemptions from Tax. Tax exemptions; farmers' cooperative corporation; foreign person subject to tax; calculation of business income tax base; definitions.

(1) Except as otherwise provided in this section, the following are exempt from the tax imposed by this act:

(a) The United States, this state, other states, and the agencies, political subdivisions, and enterprises of the United States, this state, and other states, including any grantor trust established by a municipality with the municipality as the grantor and exempt from federal income tax under the internal revenue code.

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

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

ii. An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section501(c)(12) of the internal revenue code except that it failed to meet the requirements in section 501(c)(12) that 85% or more of its income consist of amounts collected from members.

iii. The tax base attributable to the activities giving rise to the unrelated taxable business income of an exempt person.

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

(d) That portion of the tax base attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods. "Production of agricultural goods" means commercial farming, including, but not limited to, cultivation of the soil; growing and harvesting of an agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish,

fur-bearing animals, or poultry; or turf or tree farming, but does not include the marketing at retail of agricultural goods except for sales of nursery stock grown by the seller and sold to a nursery dealer licensed under section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209.

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

i. The corporation's repurchase from nonproducer customers of portions or components of commodities the corporation markets to those nonproducer customers and the corporation's subsequent manufacturing or marketing of the repurchased portions or components of the commodities.

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

(f) That portion of the tax base attributable to the direct and indirect marketing activities of a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98, if those marketing activities are provided on behalf of the members of that corporation and are related to the members' direct sales of their products to third parties or, for livestock, are related to the members' direct or indirect sales of that product to third parties. Marketing activities for a product that is not livestock are not exempt under this subdivision if the farmers' cooperative corporation takes physical possession of the product. As used in this subdivision, "marketing activities" means activities that include, but are not limited to, all of the following:

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

ii. Dissemination of market information.

iii. Establishment of price and other terms of trade.

iv. Promotion.

v. Research relating to members' products.

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

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

(i) A foreign person is not subject to taxation under this act if the foreign person is domiciled in a subnational jurisdiction that does not impose an income tax on a similarly situated person domiciled in this state whose presence in the foreign country is the same as the foreign person's presence in the United States. if a foreign person is domiciled in a subnational jurisdiction that does not impose an income tax on businesses, but instead imposes some other type of subnational business tax, that foreign person is not subject to taxation under this act if that subnational business tax is not imposed on a similarly situated person domiciled in this state whose presence in the foreign country is the same as the foreign person's presence in the united states.

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

(3) Except as otherwise provided in this section, a farmers' cooperative corporation that is structured to allocate net earnings in the form of patronage dividends as defined in section 1388 of the internal revenue code to its farmer or farmer cooperative corporation patrons shall exclude from its adjusted tax base the revenue and expenses attributable to business transacted with its farmer or farmer cooperative corporation patrons.

(4) Notwithstanding any other provision of this act to the contrary, a foreign person subject to tax under this act shall calculate its business income tax base and modified gross receipts tax base under this section. Except as otherwise provided in this section, the business income tax base and modified gross receipts tax base of a foreign person is subject to all adjustments and other provisions of this act. However, neither the business income tax base nor the modified gross receipts tax base shall include proceeds from sales where title passes outside the United States.

(5) Except as otherwise provided in this section, the modified gross receipts tax base of a foreign person includes the sum of gross receipts and the adjustments under section 203 that are related to United States business activity.

(6) Except as otherwise provided in this section, the business income tax base of a foreign person includes the sum of business income and the adjustments under section 201 that are related to United States business activity.

(7) The sales factor for a foreign person is a fraction, the numerator of which is the taxpayer's total sales in this state where title passes inside the United States during the tax year and the denominator of which is the taxpayer's total sales in the United States where title passes inside the United States during the tax year.

(8) As used in this section:

(a) "Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the internal revenue code that are related to that gross income. gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both within and outside the United States to the extent the recipient receives benefit of the services within the United States.

(b) "Domiciled" means the location of the headquarters of the trade or business from which the trade or business of the foreign person is principally managed and directed.

(c) For subsection (1)(b), "exclusively" means that term as applied for purposes of section 501(c)(3) of the internal revenue code.

(d) "Foreign person" means either of the following:

i. An individual who is not a United States resident, whether or not the individual is subject to taxation under the internal revenue code.

ii. A person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the internal revenue code.

(e) "Gross receipts" means, for a foreign person, gross receipts as defined in section 111(1) from United States business activity or from sources within the United States. Gross receipts include all sales for which title transfers within the United States; proceeds from all services performed within the United States; and a pro rata portion of proceeds from services performed both within and outside of the United States to the extent the recipient receives benefit of the services within the United States.

CHAPTER 2A

Section 235. MCL 208.1235 Insurance Company Gross Premiums Tax. Insurance companies; tax payment; determination; direct premiums; exceptions; tax in lieu of privilege or franchise fees or taxes; nonapplicability of tax to MCL 500.4601 to 500.4673 and MCL 500.4701 to 500.4747.

(1) Each insurance company shall pay a tax determined under this chapter.

(2) The tax imposed by this chapter on each insurance company shall be a tax equal to 1.25% of gross direct premiums written on property or risk located or residing in this state. Direct premiums do not include any of the following:

(a) Premiums on policies not taken.

(b) Returned premiums on canceled policies.

(c) Receipts from the sale of annuities.

(d) Receipts on reinsurance premiums if the tax has been paid on the original premiums.

(e) The first $190,000,000.00 of disability insurance premiums written in this state, other than credit insurance and disability income insurance premiums, of each insurance company subject to tax under this chapter. This exemption shall be reduced by $2.00 for each $1.00 by which the insurance company's gross direct premiums from insurance carrier services in this state and outside this state exceed $280,000,000.00.

(3) The tax calculated under this chapter is in lieu of all other privilege or franchise fees or taxes imposed by this act or any other law of this state, except taxes on real and personal property, taxes collected under the general sales tax act, 1933 PA 167, MCL 205.1 to 205.78, and taxes collected under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and except as otherwise provided in the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(4) The tax imposed and levied under this act does not apply to an insurance company authorized under chapter 46 or 47 of the insurance code of 1956, 1956 PA 218, MCL 500.4601 to 500.4673, and MCL 500.4701 to 500.4747.

Section 237. MCL 208.1237 Insurance company; tax credit; amounts; use of assessments from preceding tax year.

(1) An insurance company may claim a credit against the tax imposed under this chapter in the following amounts:

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

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

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

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

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

(2) The assessments of an insurance company from the immediately preceding tax year shall be used in calculating the credits allowed under this section for each tax year.

Section 239. MCL 208.1239 Insurance company; tax credit equal to 65% examination fees; amount; limitation.

(1) An insurance company shall be allowed a credit against the tax imposed under this chapter in an amount equal to 50% of the examination fees paid by the insurance company during the tax year pursuant to section 224 of the insurance code of 1956, 1956 PA 218, MCL 500.224.

(2) An insurance company may claim a credit against the tax imposed under this act as provided under section 403(2), not to exceed 65% of the insurance company's tax liability for the tax year after claiming the other credits allowed by this chapter.

Section 241. MCL 208.1241 Insurance company subject to worker's disability compensation act of 1969; tax credit; amount; refund in excess of tax liability.

(1) For amounts paid pursuant to section 352 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.352, an insurance company subject to the worker's disability compensation act of 1969, 1969 PA 317, MCL418.101 to 418.941, may claim a credit against the tax imposed under this chapter for the tax year in an amount equal to the amount paid during that tax year by the insurance company pursuant to section 352 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.352, as certified by the director of the bureau of worker's disability compensation pursuant to section 391(6) of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.391.

(2) An insurance company claiming a credit under this section may claim a portion of the credit allowed under this section equal to the payments made during a calendar quarter pursuant to section 352 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.352, against the estimated tax payments made under section 501. Any credit in excess of an estimated payment shall be refunded to the insurance company on a quarterly basis within 60calendar days after receipt of a properly completed estimated tax return. Any subsequent increase or decrease in the amount claimed for payments made by the insurance company shall be reflected in the amount of the credit taken for the calendar quarter in which the amount of the adjustment is finalized.

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

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

Section 243. MCL 208.1243 Insurance company; tax; imposition; tax year as calendar year; filing annual return; calculation of estimated payment; disclosure of tax return.

(1) An insurance company is subject to the tax imposed by this chapter or by section 476a of the insurance code of 1956, 1956 PA 218, MCL 500.476a, if applicable, whichever is greater.

(2) The tax year of an insurance company is the calendar year.

(3) Notwithstanding section 505, an insurance company shall file the annual return required under this act before March 2 after the end of the tax year, and an automatic extension under section

(4) For the purpose of calculating an estimated payment required by section 501, the greater of the amount of tax imposed on an insurance company under this chapter or under section 476a of the insurance code of 1956, 1956 PA 218, MCL 500.476a, shall be considered the insurance company's tax liability for the immediately preceding tax year.

(5) The requirements of section 28(1)(f) of 1941 PA 122, MCL 205.28, that prohibit an employee or authorized representative of, a former employee or authorized representative of, or anyone connected with the department from divulging any facts or information obtained in connection with the administration of a tax, do not apply to disclosure of a tax return required by this section.

CHAPTER 2B

Section 261. MCL 208.1261 Definitions relevant to financial institutions.

As used in this chapter:

(a) "Billing address" means the location indicated in the books and records of the financial institution on the first day of the tax year or on a later date in the tax year when the customer relationship began as the address where any notice, statement, or bill relating to a customer's account is mailed.

(b) "Borrower is located in this state" or "credit card holder is located in this state" means a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state, or a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) "Commercial domicile" means the headquarters of the trade or business, that is the place from which the trade or business is principally managed and directed, or if a financial institution is organized under the laws of a foreign country, of the commonwealth of Puerto Rico, or any territory or possession of the United States, such financial institution's commercial domicile shall be deemed for the purposes of this chapter to be the state of the United States or the District of Columbia from which such financial institution's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the financial institution's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the tax year.

(d) "Credit card" means a credit, travel, or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a financial institution receives from a merchant's bank because 1 of the persons to whom the financial institution has issued a credit card has charged merchandise or services to the credit card.

(f) "Financial institution" means any of the following:

i. A bank holding company, a national bank, a state chartered bank, an office of thrift supervision chartered bank or thrift institution, a savings and loan holding company other than a diversified savings and loan holding company as defined in 12 USC 1467a(a)(F), or a federally chartered farm credit system institution.

ii. Any person, other than a person subject to the tax imposed under chapter 2A, who is directly or indirectly owned by an entity described in subparagraph (i) and is a member of the unitary business group.

iii. A unitary business group of entities described in subparagraph (i) or (ii), or both.

(g) "Gross business" means the sum of the following less transactions between those entities included in a unitary business group:

i. Fees, commissions, or other compensation for financial services.

ii. Net gains, not less than zero, from the sale of loans and other intangibles.

iii. Net gains, not less than zero, from trading in stocks, bonds, or other securities.

iv. Interest charged to customers for carrying debit balances of margin accounts.

v. Interest and dividends received.

vi. Any other gross proceeds resulting from the operation as a financial institution.

(h) "Loan" means any extension of credit resulting from direct negotiations between the financial institution and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include properties treated as loans under section 595 of the internal revenue code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest-bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit, or other mortgage-backed or asset-backed security, and other similar items.

(i) "Loan secured by real property" means that 50% or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(j) "Merchant discount" means the fee or negotiated discount charged to a merchant by the financial institution for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the credit card holder.

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

(l) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(m) "Principal base of operation", with respect to transportation property, means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the principal base of operations means the place of more or less permanent nature from which the employee regularly does any of the following:

i. Starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer.

ii. Communicates with his or her customers or other persons.

iii. Performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(n) "Real property owned" and "tangible personal property owned" mean real and tangible personal property respectively on which the financial institution may claim depreciation for federal income tax purposes or to which the financial institution holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real and tangible personal properties do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(o) "Regular place of business" means an office at which the financial institution carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the financial institution. The financial institution shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than 1 regular place of business and 1 such regular place of business is in this state and 1 such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the financial institution where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the financial institution demonstrates

to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the financial institution.

(p) "Rolling stock" means railroad freight or passenger cars, locomotives, or other rail cars.

(q) "Syndication" means an extension of credit in which 2 or more persons finance the credit and each person is at risk only up to a specified percentage of the total extension of the credit or up to a specified dollar amount.

(r) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, or trailers.

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

Section 263. MCL 208.1263 Financial Institution Franchise Tax. Subject to franchise tax; nexus.

(1) Every financial institution with nexus in this state as determined under section 200 is subject to a franchise tax. The franchise tax is imposed upon the tax base of the financial institution as determined under section 265 after allocation or apportionment to this state, at the rate of 0.235%.

(2) The tax under this chapter is in lieu of the tax levied and imposed under chapter 2 of this act.

Section 265. MCL 208.1265 Financial institution; tax base; net capital; computation; determination; change in organization; combination of financial institutions.

(1) For a financial institution, tax base means the financial institution's net capital. Net capital means equity capital as computed in accordance with generally accepted accounting principles less goodwill and the average daily book value of United States obligations and Michigan obligations. If the financial institution does not maintain its books and records in accordance with generally accepted accounting principles, net capital shall be computed in accordance with the books and records used by the financial institution, so long as the method fairly reflects the financial institution's net capital for purposes of the tax levied by this chapter. Net capital does not include up to 125% of the minimum regulatory capitalization requirements of a person subject to the tax imposed under chapter 2A.

(2) Net capital shall be determined by adding the financial institution's net capital as of the close of the current tax year and preceding 4 tax years and dividing the resulting sum by 5. If a financial institution has not been in existence for a period of 5 tax years, net capital shall be determined by adding together the financial institution's net capital for the number of tax years the financial institution has been in existence and dividing the resulting sum by the number of years the financial institution has been in existence. For purposes of this section, a partial year shall be treated as a full year.

(3) For a unitary business group of financial institutions, net capital calculated under this section does not include the investment of 1 member of the unitary business group in another member of that unitary business group.

(4) For purposes of this section, each of the following applies:

(a) A change in identity, form, or place of organization of 1 financial institution shall be treated as if a single financial institution had been in existence for the entire tax year in which the change occurred and each tax year after the change.

(b) The combination of 2 or more financial institutions into 1 shall be treated as if the constituent financial institutions had been a single financial institution in existence for the entire tax year in which the combination occurred and each tax year after the combination, and the book values and deductions for United States obligations and Michigan obligations of the constituent institutions shall be combined. A combination shall include any acquisition required to be accounted for by the surviving financial institution in accordance with generally accepted accounting principles or a statutory merger or consolidation.

Section 267. MCL 208.1267 Financial institution; tax base; allocation within state; apportionment within and outside state; circumstances; gross business factor.

(1) Except as otherwise provided under this chapter, the tax base of a financial institution whose business activities are confined solely to this state shall be allocated to this state. Except as otherwise provided under subsection (5), the tax base of a financial institution whose business activities are subject to tax both within and outside this state shall be apportioned to this state by multiplying the tax base by the gross business factor.

(2) A financial institution whose business activities are subject to tax both within and outside of this state is subject to tax in another state in either of the following circumstances:

(a) The financial institution is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax or a tax of the type imposed under this act in that state.

(b) That state has jurisdiction to subject the financial institution to 1 or more of the taxes listed in subdivision (a) regardless of whether that state does or does not subject the financial institution to that tax.

(3) Except as otherwise provided in subsection (4), the gross business factor is a fraction, the numerator of which is the total gross business of the financial institution in this state during the tax year and the denominator of which is the total gross business of the financial institution everywhere during the tax year.

(4) Except as otherwise provided under this subsection, for a financial institution that is included in a unitary business group, gross business includes gross business in this state of every financial institution included in the unitary business group without regard to whether the financial institution has nexus in this state. Gross business between financial institutions included in a unitary business group must be eliminated in calculating the gross business factor.

(5) Notwithstanding subsection (1), a taxpayer that restructures as a financial institution on or after January 1, 2008 and that prior to that restructuring qualified to apportion its tax base based on its sales factor calculated under section 307 may elect to continue to have the tax base from its business activities that are subject to tax both within and outside this state apportioned to this state by multiplying its tax base by its sales factor calculated in accordance with section 307.

Section 269. MCL 208.1269 Financial institution; gross business.

Gross business in this state of the financial institution is determined as follows:

(a) Receipts from credit card receivables including without limitation interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to credit card holders such as annual fees are in this state if the billing address of the credit card holder is located in this state.

(b) Credit card issuer's reimbursement fees are in this state if the billing address of the credit card holder is located in this state.

(c) Receipts from merchant discounts are in this state if the commercial domicile of the merchant is in this state.

(d) Loan servicing fees are in this state under any of the following circumstances:

i. For a loan secured by real property, if the real property for which the loan is secured is in this state.

ii. For a loan secured by real property, if the real property for which the loan is secured is located both within and without this state and 1 or more other states and more than 50% of the fair market value of the real property is located in this state.

iii. For a loan secured by real property, if more than 50% of the fair market value of the real property for which the loan is secured is not located within any 1 state but the borrower is located in this state.

iv. For a loan not secured by real property, the borrower is located in this state.

(e) Receipts from services are in this state if the recipient of the services receives all of the benefit of the services in this state. If the recipient of the services receives some of the benefit of the services in this state, the receipts are included in the numerator of the apportionment factor in proportion to the extent that the recipient receives benefit of the services in this state.

(f) Receipts from investment assets and activities and trading assets and activities, including interest and dividends, are in this state if the financial institution's customer is in this state. If the location of the financial institution's customer cannot be determined, both of the following:

i. Interest, dividends, and other income from investment assets and activities and from trading assets and activities, including, but not limited to, investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. Interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. The amount of receipts and other income from investment assets and activities is in this state if assets are assigned to a regular place of business of the taxpayer within this state.

ii. The amount of receipts from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts otherwise sourced in this section, are in this state if the assets are assigned to a regular place of business of the taxpayer within this state.

(g) Interest charged to customers for carrying debit balances on margin accounts without deduction of any costs incurred in carrying the accounts is in this state if the customer is located in this state.

(h) Interest from loans secured by real property is in this state if the property is located in this state, if the property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is

located in this state, and if more than 50% of the fair market value of the real property is not located within any 1 state but the borrower is located in this state.

(i) Interest from loans not secured by real property is in this state if the borrower is located in this state.

(j) Net gains from the sale of loans secured by real property or mortgage service rights relating to real property are in this state if the property is in this state, if the property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is located within this state, or if more than 50% of the fair market value of the real property is not located in any 1 state, but the borrower is located in this state.

(k) Net gains from the sale of loans not secured by real property or any other intangible assets are in this state if the depositor or borrower is located in this state.

(l) Receipts from the lease of real property are in this state if the property is located in this state.

(m) Receipts from the lease of tangible personal property are in this state if the property is located in this state when it is first placed in service by the lessee.

(n) Receipts from the lease of transportation tangible personal property are in this state if the property is used in this state or if the extent of use of the property within this state cannot be determined but the property has its principal base of operations within this state.

CHAPTER 2C

Section 281. MCL 208.1281 Surcharge. Annual surcharge; imposition; levy; "Michigan personal income" defined; limitation on amount; applicability; administration, collection, and enforcement.

(1) In addition to the taxes imposed and levied under this act and subject to subsections (2), (3), and (4), to meet deficiencies in state funds an annual surcharge is imposed and levied on each taxpayer equal to the following percentage of the taxpayer's tax liability under this act after allocation or apportionment to this state under this act but before calculation of the various credits available under this act:

(a) For each taxpayer other than a person subject to the tax imposed and levied under chapter 2B, 21.99%.

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

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

ii. For tax years ending after December 31, 2008, 23.4%.

(2) If the Michigan personal income growth exceeds 0% in any 1 of the 3 calendar years immediately preceding the 2017 calendar year, then the surcharge under subsection (1) shall not be levied and imposed on or after January 1, 2017. For purposes of this subsection, "Michigan personal income" means personal income for this state as defined by the bureau of economic analysis of the United States department of commerce or its successor.

(3) The amount of the surcharge imposed and levied on any taxpayer under subsection (1)(a) shall not exceed $6,000,000.00 for any single tax year.

(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.

(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.

CHAPTER 3

Section 301. MCL 208.1301 Tax base; apportionment; allocation; taxpayer subject to tax in another state; circumstances.

(1) Except as otherwise provided in this act, each tax base established under this act shall be apportioned in accordance with this chapter.

(2) Each tax base of a taxpayer whose business activities are confined solely to this state shall be allocated to this state. Each tax base of a taxpayer whose business activities are subject to tax both within and outside of this state shall be apportioned to this state by multiplying each tax base by the sales factor calculated under section 303.

(3) A taxpayer whose business activities are subject to tax both within and outside of this state is subject to tax in another state in either of the following circumstances:

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

(b) That state has jurisdiction to subject the taxpayer to 1 or more of the taxes listed in subdivision (a) regardless of whether that state does or does not subject the taxpayer to that tax.

Section 303. MCL 208.1303 Sales factor; calculation.

(1) Except as otherwise provided in subsection (2) and section 311, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year.

(2) Except as otherwise provided under this subsection, for a taxpayer that is a unitary business group, sales include sales in this state of every person included in the unitary business group without regard to whether the person has nexus in this state. Sales between persons included in a unitary business group must be eliminated in calculating the sales factor.

Section 305. MCL 208.1305 Taxpayer; determination of sales.

(1) Sales of the taxpayer in this state are determined as follows:

(a) Sales of tangible personal property are in this state if the property is shipped or delivered, or, in the case of electricity and gas, the contract requires the property to be shipped or delivered, to any purchaser within this state based on the ultimate destination at the point that the property comes to rest regardless of the free on board point or other conditions of the sales.

(b) Receipts from the sale, lease, rental, or licensing of real property are in this state if that property is located in this state.

(c) Receipts from the lease or rental of tangible personal property are sales in this state to the extent that the property is utilized in this state. The extent of utilization of tangible personal property in this state is determined by multiplying the receipts by a fraction, the numerator of which is the number of days of physical location of the property in this state during the lease or rental period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all lease or rental periods in the tax year. If the physical location of the property during the lease or rental period is unknown or cannot be determined, the tangible personal property is utilized in the state in which the property was located at the time the lease or rental payer obtained possession.

(d) Receipts from the lease or rental of mobile transportation property owned by the taxpayer are in this state to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's sales factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of the fraction is the number of landings of the aircraft in this state and the denominator of the fraction is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the receipts are in this state if the property has its principal base of operations in this state.

(e) Royalties and other income received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, computer software, or similar items, are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income shall be excluded from both the numerator and the denominator. Intangible property is used in this state if the purchaser uses the intangible property or the rights to the intangible property in the regular course of its business operations in this state, regardless of the location of the purchaser's customers.

(2) Sales from the performance of services are in this state and attributable to this state as follows:

(a) Except as otherwise provided in this section, all receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the services receives all of the benefit of the services in this state. If the recipient of the services receives some of the benefit of the services in this state, the receipts are included in the numerator of the apportionment factor in

proportion to the extent that the recipient receives benefit of the services in this state.

(b) Sales derived from securities brokerage services attributable to this state are determined by multiplying the total dollar amount of receipts from securities brokerage services by a fraction, the numerator of which is the sales of securities brokerage services to customers within this state, and the denominator of which is the sales of securities brokerage services to all customers. Receipts from securities brokerage services include commissions on transactions, the spread earned on principal transactions in which the broker buys or sells from its account, total margin interest paid on behalf of brokerage accounts owned by the broker's customers, and fees and receipts of all kinds from the underwriting of securities. If receipts from brokerage services can be associated with a particular customer, but it is impractical to associate the receipts with the address of the customer, then the address of the customer shall be presumed to be the address of the branch office that generates the transactions for the customer.

(c) Sales of services that are derived directly or indirectly from the sale of management, distribution, administration, or securities brokerage services to, or on behalf of, a regulated investment company or its beneficial owners, including receipts derived directly or indirectly from trustees, sponsors, or participants of employee benefit plans that have accounts in a regulated investment company, shall be attributable to this state to the extent that the shareholders of the regulated investment company are domiciled within this state. For purposes of this subdivision, "domicile" means the shareholder's mailing address on the records of the regulated investment company. If the regulated investment company or the person providing management services to the regulated investment company has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, then the shareholder's primary residence or principal place of business is the shareholder's domicile. A separate computation shall be made with respect to the receipts derived from each regulated investment company. The total amount of sales attributable to this state shall be equal to the total receipts received by each regulated investment company multiplied by a fraction determined as follows:

i. The numerator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by the regulated investment company shareholders who have their domicile in this state.

ii. The denominator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by all shareholders.

iii. For purposes of the fraction, the year shall be the tax year of the regulated investment company that ends with or within the tax year of the taxpayer.

(3) Receipts from the origination of a loan or gains from the sale of a loan secured by residential real property is deemed a sale in this state only if 1 or more of the following apply:

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

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

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

(4) Interest from loans secured by real property is in this state if the property is located within this state or if the property is located both within this state and 1 or more other states, if more than 50% of the fair market value of the real property is located within this state, or if more than 50% of the fair market value of the real property is not located within any 1 state, if the borrower is located in this state. The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(5) Interest from a loan not secured by real property is in this state if the borrower is located in this state.

(6) Gains from the sale of a loan not secured by real property, including income recorded under the coupon stripping rules of section 1286 of the internal revenue code, are in this state if the borrower is in this state.

(7) Receipts from credit card receivables, including interest, fees, and penalties from credit card receivables and receipts from fees charged to cardholders, such as annual fees, are in this state if the billing address of the cardholder is in this state.

(8) Receipts from the sale of credit card or other receivables is in this state if the billing address of the customer is in this state. Credit card issuer's reimbursements fees are in this state if the billing address of the cardholder is in this state. Receipts from merchant discounts, computed net of any cardholder chargebacks, but not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders, are in this state if the commercial domicile of the merchant is in this state.

(9) Loan servicing fees derived from loans of another secured by real property are in this state if the real property is located in this state, or the real property is located both within and outside of this state and 1 or more states if more than 50% of the fair market value of the real property is located in this state, or more than 50% of the fair market value of the real property is not located in any 1 state, and the borrower is located in this state. Loan servicing fees derived from loans of another not secured by real property are in this state if the borrower is located in this state. If the location of the security cannot be determined, then loan servicing fees for servicing either the secured or the unsecured loans of another are in this state if the lender to whom the loan servicing service is provided is located in this state.

(10) Receipts from the sale of securities and other assets from investment and trading activities, including, but not limited to, interest, dividends, and gains are in this state in either of the following circumstances:

(a) The person's customer is in this state.

(b) If the location of the person's customer cannot be determined, both of the following:

i. Interest, dividends, and other income from investment assets and activities and from trading assets and activities, including, but not limited to, investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. Interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. The amount of receipts and other income from investment assets and activities is in this state if assets are assigned to a regular place of business of the taxpayer within this state.

ii. The amount of receipts from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts otherwise sourced in this section, are in this state if the assets are assigned to a regular place of business of the taxpayer within this state.

(11) Receipts from transportation services rendered by a person subject to tax in another state are in this state and shall be attributable to this state as follows:

(a) Except as otherwise provided in subdivisions (b) through (e), receipts shall be proportioned based on the ratio that revenue miles of the person in this state bear to the revenue miles of the person everywhere.

(b) Receipts from maritime transportation services shall be attributable to this state as follows:

i. 50% of those receipts that either originate or terminate in this state.

ii. 100% of those receipts that both originate and terminate in this state.

(c) Receipts attributable to this state of a person whose business activity consists of the transportation both of property and of individuals shall be proportioned based on the total gross receipts for passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger

transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively.

(d) Receipts attributable to this state of a person whose business activity consists of the transportation of oil by pipeline shall be proportioned based on the ratio that the gross receipts for the barrel miles transported in this state bear to the gross receipts for the barrel miles transported by the person everywhere.

(e) Receipts attributable to this state of a person whose business activities consist of the transportation of gas by pipeline shall be proportioned based on the ratio that the gross receipts for the 1,000 cubic feet miles transported in this state bear to the gross receipts for the 1,000 cubic feet miles transported by the person everywhere.

(12) For purposes of subsection (11), if a taxpayer can show that revenue mile information is not available or cannot be obtained without unreasonable expense to the taxpayer, receipts attributable to this state shall be that portion of the revenue derived from transportation services everywhere performed that the miles of transportation services performed in this state bears to the miles of transportation services performed everywhere. If the department determines that the information required for the calculations under subsection (11) are not available or cannot be obtained without unreasonable expense to the taxpayer, the department may use other available information that in the opinion of the department will result in an equitable allocation of the taxpayer's receipts to this state.

(13) Except as provided in subsections (14) through (19), receipts from the sale of telecommunications service or mobile telecommunications service are in this state if the customer's place of primary use of the service is in this state. As used in this subsection, "place of primary use" means the customer's residential street address or primary business street address where the customer's use of the telecommunications service primarily occurs. For mobile telecommunications service, the customer's residential street address or primary business street address is the place of primary use only if it is within the licensed service area of the customer's home service provider.

(14) Receipts from the sale of telecommunications service sold on an individual call-by-call basis are in this state if either of the following applies:

(a) The call both originates and terminates in this state.

(b) The call either originates or terminates in this state and the service address is located in this state.

(15) Receipts from the sale of postpaid telecommunications service are in this state if the origination point of the telecommunication signal, as first identified by the service provider's telecommunication system or as identified by information received by the seller from its service provider if the system used to transport telecommunication signals is not the seller's, is located in this state.

(16) Receipts from the sale of prepaid telecommunications service or prepaid mobile telecommunications service are in this state if the purchaser obtains the prepaid card or similar means of conveyance at a location in this state. Receipts from recharging a prepaid telecommunications service or mobile telecommunications service is in this state if the purchaser's billing information indicates a location in this state.

(17) Receipts from the sale of private communication services are in this state as follows:

(a) 100% of the receipts from the sale of each channel termination point within this state.

(b) 100% of the receipts from the sale of the total channel mileage between each termination point within this state.

(c) 50% of the receipts from the sale of service segments for a channel between 2 customer channel termination points, 1 of which is located in this state and the other is located outside of this state, which segments are separately charged.

(d) The receipts from the sale of service for segments with a channel termination point located in this state and in 2 or more other states or equivalent jurisdictions, and which segments are not separately billed, are in this state based on a percentage determined by dividing the number of customer channel termination points in this state by the total number of customer channel termination points.

(18) Receipts from the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser's customers. If the location of the purchaser's customers is not known or cannot be determined, the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser.

(19) Receipts to access a carrier's network or from the sale of telecommunications services for resale are in this state as follows:

(a) 100% of the receipts from access fees attributable to intrastate telecommunications service that both originates and terminates in this state.

(b) 50% of the receipts from access fees attributable to interstate telecommunications service if the interstate call either originates or terminates in this state.

(c) 100% of the receipts from interstate end user access line charges, if the customer's service address is in this state. As used in this subdivision, "interstate end user access line charges" includes, but is not limited to, the surcharge approved by the federal communications commission and levied pursuant to 47 CFR 69.

(d) Gross receipts from sales of telecommunications services to other telecommunication service providers for resale shall be sourced to this state using the apportionment concepts used for non-resale receipts of telecommunications

services if the information is readily available to make that determination. If the information is not readily available, then the taxpayer may use any other reasonable and consistent method.

(20) Except as otherwise provided under this subsection, for a taxpayer whose business activities include live radio or television programming as described in subsector code 7922 of industry group 792 under the standard industrial classification code as compiled by the United States department of labor or are included in industry groups 483, 484, 781, or 782 under the standard industrial classification code as compiled by the United States department of labor, or any combination of the business activities included in those groups, media receipts are in this state and attributable to this state only if the commercial domicile of the customer is in this state and the customer has a direct connection or relationship with the taxpayer pursuant to a contract under which the media receipts are derived. For media receipts from the sale of advertising, if the customer of that advertising is commercially domiciled in this state and receives some of the benefit of the sale of that advertising in this state, the media receipts from the advertising to that customer are included in the numerator of the apportionment factor in proportion to the extent that the customer receives the benefit of the advertising in this state. For purposes of this subsection, if the taxpayer is a broadcaster and if the customer receives some of the benefit of the advertising in this state, the media receipts for that sale of advertising from that customer shall be proportioned based on the ratio that the broadcaster's viewing or listening audience in this state bears to its total viewing or listening audience everywhere. As used in this subsection:

(a) "Media property" means motion pictures, television programs, internet programs and websites, other audiovisual works, and any other similar property embodying words, ideas, concepts, images, or sound without regard to the means or methods of distribution or the medium in which the property is embodied.

(b) "Media receipts" means receipts from the sale, license, broadcast, transmission, distribution, exhibition, or other use of media property and receipts from the sale of media services. Media receipts do not include receipts from the sale of media property that is a consumer product that is ultimately sold at retail.

(c) "Media services" means services in which the use of the media property is integral to the performance of those services.

(21) Terms used in subsections (13) through (19) have the same meaning as those terms defined in the streamlined sales and use tax agreement administered under the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833.

(22) For purposes of this section, a borrower is considered located in this state if the borrower's billing address is in this state.

Section 307. MCL 208.1307 Spun off corporation; calculation of sales factor; election; definitions.

(1) Notwithstanding sections 303 and 305, a spun off corporation that qualified to calculate its sales factor for 7 years under section 54 of former 1975 PA 228 may elect to calculate its sales factor under this section for an additional 4 years following those 7 years or 3 years if a taxpayer had an election approved under section 54(1)(e) of former 1975 PA 228. Prior to the end of the first year following the 7 years for which the taxpayer qualified under section 54 of former 1975 PA 228 and if the spun off corporation is not required to file amended returns under section 54(5) of former 1975 PA 228, the spun off corporation may request, in writing, approval from the state treasurer for the election of the 4 additional years under this section. If the taxpayer had an election approved under section 54(1)(e) of former 1975 PA 228, the taxpayer is not required to seek approval under this section. The department shall approve the election under this subsection if the requirements of this section are met. The request shall include all of the following:

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

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

(c) A commitment by the spun off corporation to invest at least an additional $200,000,000.00 of capital investment in this state within the additional 4 years and maintain at least 80% of the number of full-time equivalent employees in this state based on the number of full-time equivalent employees in this state at the beginning of the additional 4-year period for all of the additional 4 years; a commitment by the spun off corporation to invest an additional $400,000,000.00 in this state within the additional 4 years; or a commitment by the spun off corporation to invest a total of $1,300,000,000.00 in this state within the 11-year period beginning with the year in which the restructuring transaction under which a spun off corporation qualified under this subsection was completed. The 4-year period under this subdivision begins with the eighth year following the tax year in which the restructuring transaction under which a spun off corporation qualified under this subsection was completed. For purposes of this subdivision, the number of full-time equivalent employees includes employees in all of the following circumstances:

i. On temporary layoff.

ii. On strike.

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

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

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

(2) Prior to the end of the eleventh year following the restructuring transaction under which a spun off corporation qualified under subsection (1), a taxpayer that is a buyer of a plant located in this state that was included in the initial restructuring transaction under subsection (1) may elect to calculate its sales factor under subsection (3) and disregard sales by the taxpayer attributable to that plant to a former parent of a spun off corporation and the sales attributable to the plant shall be treated as sales by a spun off corporation. This election shall extend for a period of 4 years following the date that the plant was purchased reduced by the number of years for which the taxpayer calculated its sales factor pursuant to section 54(2) of former 1975 PA 228. On or before the due date for filing the buyer's first annual return under this act following the purchase of the plant, the buyer shall request, in writing, approval from the department for the election provided under this section and shall attach a statement that the buyer qualifies for the election under this section.

(3) A spun off corporation qualified under subsection (1) or (2) that makes an election and is approved under subsection (1) or (2) calculates its sales factor under section 54 of former 1975 PA 228 subject to both of the following:

(a) A purchaser in this state under section 52 of former 1975 PA 228 does not include a person that purchases from a seller that was included in the purchaser's combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to be included in the purchaser's combined or consolidated annual return under this act. This subdivision applies only to sales that originate from a plant located in this state.

(b) Total sales under section 51 of former 1975 PA 228 do not include sales to a purchaser that was a member of a Michigan affiliated business group that had included the seller in the filing of a combined annual return under this act but, as a result of the restructuring transaction, ceased to include the seller. This subdivision applies only to sales that originate from a plant located in this state to a location in this state.

(4) At the end of the fourth tax year following an election under this section, if the spun off corporation that elected to calculate its sales factor under this section for the additional 4 years allowed under subsection (1) has failed to maintain the required number of employees or failed to pay or accrue the capital investment required under subsection (1)(c), the spun off corporation shall file amended annual returns under this act for the first through fourth tax years following the election under this section, regardless of the statute of limitations under section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus interest based on the sales factor as calculated under section 303. Interest shall be calculated from the due date of the annual return under this act or former 1975 PA 228 on which an exemption under this section was first claimed.

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

(6) A taxpayer whose assets were wholly owned either directly or indirectly by a taxpayer from whom a spun off corporation qualifies to apportion its tax base under this section and that ceased to be wholly owned on November 30, 2006 may annually elect on its originally filed tax return to apportion its tax base to this state using the same receipts factor reported on the combined tax return filed by its former parent company for the same taxable year.

(7) As used in this section:

(a) "Restructuring transaction" means a tax free distribution under section 355 of the internal revenue code and includes tax free transactions under section 355 of the internal revenue code that are commonly referred to as spin offs, split ups, split offs, or type D reorganizations.

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

Section 309. MCL 208.1309 Apportionment; petition; alternate method; rebuttable presumption that apportionment provisions fairly represent business activity; return or amended return not considered as petition.

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

(a) Separate accounting.

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

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

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

(3) The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly

distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.

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

Section 311. MCL 208.1311 Receipts; sourced to where benefit to customer is received.

All other receipts not otherwise sourced under this act shall be sourced based on where the benefit to the customer is received or, if where the benefit to the customer is received cannot be determined, to the customer's location.

CHAPTER 4

Section 400. MCL 208.1400 Taxpayer for purposes of credits exclude insurance companies and financial institutions; scope.

For purposes of this chapter, taxpayer does not include a person subject to the tax imposed under chapter 2A or 2B unless specifically included in the section.

Section 401. MCL 208.1401 Application of unused credit carryforward from the SBT, limitation on credit carryforward.

Except as otherwise provided under this act, any unused carryforward for any credit under former 1975 PA 228 may be applied for the 2008 and 2009 tax years and any unused carryforward after 2009 shall be extinguished.

Section 403. MCL 208.1403 Compensation Credit and Investment Tax Credit. Allowable total combined credit; limitation; tax credit; payments by professional employer organization; calculation; tax year in which negative credit is calculated; credit claimed under MCL 208.1405; taxpayer engaged in furnishing electric and gas utility service.

(1) Notwithstanding any other provision in this act, the credits provided in this section shall be taken before any other credit under this act. Except as otherwise provided in subsection (6), for the 2008 tax year, the total combined credit allowed under this section shall not exceed 50% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281. For the 2009 tax year and each tax year after 2009, the total combined credit allowed under this section shall not exceed 52% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281.

(2) Subject to the limitation in subsection (1), for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 0.296% of the taxpayer's compensation in this state. For the 2009 tax year and each tax year after 2009, subject to the limitation in subsection (1), a taxpayer may claim a credit against the tax imposed by this act equal to 0.370% of the taxpayer's compensation in this state. For purposes of this subsection, a taxpayer includes a person subject to the tax imposed under chapter 2A and a person subject to the tax imposed under chapter 2B. A professional employer organization shall not include payments by the professional employer organization to the officers and employees of a client of the professional employer organization whose employment operations are managed by the professional employer organization. A client may include payments by the professional employer organization to the officers and employees of the client whose employment operations are managed by the professional employer organization.

(3) Subject to the limitation in subsection (1), for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 2.32% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the

amounts calculated under subdivisions (a), (b), and (c). Subject to the limitation in subsection (1), for the 2009 tax year and each tax year after 2009, a taxpayer may claim a credit against the tax imposed by this act equal to 2.9% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):

(a) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets.

(b) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(c) For tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 2007 and subsequently transferred into this state and purchased or acquired for use in a business activity, calculate the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state.

(d) If the cost of tangible assets described in subdivision (a) was paid or accrued in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or this act, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the business income tax base in section 201.

(e) If the cost of tangible assets described in subdivision (b) was paid or accrued in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or this act, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the business income tax base in section 201. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) For assets purchased or acquired in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or this act, that were eligible for a credit under subdivision (a) or (c) and that were transferred out of this state, calculate the federal basis used for determining gain or loss as of the date of the transfer.

(4) For a tax year in which the amount of the credit calculated under subsection (3) is negative, the absolute value of that amount is added to the taxpayer's tax liability for the tax year.

(5) A taxpayer that claims a credit under this section is not prohibited from claiming a credit under section 405. However, the taxpayer shall not claim a credit under this section and section 405 based on the same costs and expenses.

(6) For a taxpayer primarily engaged in furnishing electric and gas utility service that makes capital investments in electric and gas distribution assets for which a portion of the credit provided under subsection (3) would be denied for the 2008 tax year by reason of the 50% limitation of subsection (1), the 50% limitation on the total combined credit for the 2008 tax year provided in subsection (1) shall be increased by an amount not to exceed the lesser of the amount of the denied credit or 50% of the tax increase under this act accrued for financial reporting purposes due to the elimination of the deduction under section 168 (k) of the internal revenue code by the amendatory act that added this subsection. Provided, however, that the total combined credit allowed under this section for the 2008 tax year shall not exceed 80% of the tax liability imposed under this act after the imposition and levy of the surcharge under section 281.

Section 405. MCL 208.1405 Research and Development Credit. Taxpayer's research and development expenses; tax credit; limitation.

For the 2008 tax year, a taxpayer may claim a credit against the tax imposed by this act equal to 1.52% of the taxpayer's research and development expenses in this state in the tax year. For the 2009 tax year and each tax year after 2009, a taxpayer may claim a credit against the tax imposed by this act equal to 1.90% of the taxpayer's research and development expenses in this state in the tax year. The credit under this section combined with the total combined credit allowed under section 403 shall not exceed 65% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281. As used in this section, "research and development expenses" means that term as defined in section 41(b) of the internal revenue code.

<u>Section 407. MCL 208.1407</u> Technology Innovation Credit. Eligible contribution made by qualified taxpayer; tax credit; application; criteria for review of application; certificate; issuance; contents; limitation on credits granted; agreement requiring compliance with application provisions; refund of excess credit; definitions.

(1) For the 2008, 2009, and 2010 tax years, a qualified taxpayer that makes an eligible contribution in an eligible business may claim a credit against the tax imposed by the act equal to 30% of the taxpayer's eligible contribution, not to exceed $300,000.00.

(2) Prior to making an eligible contribution, a qualified taxpayer shall submit an application to the authority for approval of the credit. The application shall include all of the following:

(a) An economic impact analysis, including all of the following:

i. The impact on both the qualified taxpayer and eligible business.

ii. The number of jobs created.

(b) A project and collaboration structure that includes:

i. The structure of investment between the qualified taxpayer and eligible business.

ii. Technology development roles and responsibilities.

iii. A commercialization plan, including intellectual property structure.

(c) A technology summary, including a due diligence review by the qualified taxpayer.

(d) A financial summary.

(3) The authority shall develop criteria to competitively review applications, including criteria related to both of the following:

(a) Total cash investment by the qualified taxpayer.

(b) Total in-kind services provided by the qualified taxpayer.

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

(5) The certificate required by subsection (4) shall state all of the following:

(a) The taxpayer is an eligible business.

(b) The amount of the credit under this section for the eligible business for the designated tax year, which shall be the year in which contribution is made.

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

(6) The authority shall not grant more than 20 credits under this section for any 1 year, based on an application and a competitive review criteria.

(7) A qualified taxpayer that receives a credit under this section and the eligible business to which a contribution is made shall enter into an agreement with the authority that requires the qualified taxpayer and the eligible business to comply with the relevant provisions of the application as determined by the authority for a period of 5 years. If the authority determines that there has not been compliance with the requirements of the terms of the agreement, the qualified taxpayer shall be liable for an amount equal to 125% of the total of all credits received under this section for all tax years.

(8) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall be refunded.

(9) As used in this section:

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

(b) "Eligible contribution" means the transfer of pecuniary interest in the form of cash of not less than $350,000.00, for the purposes of research and development and technology innovation. An eligible contribution does not include contract research.

(c) "Eligible business" means a taxpayer engaged in research and development that together with any affiliates employs fewer than 50 full-time employees or has gross receipts of less than $10,000,000.00 and has no prior financial interest in the qualified taxpayer and in which the qualified taxpayer has no prior financial interest.

(d) "Qualified taxpayer" means a taxpayer that meets all of the following criteria:

i. Proposes to fund, support, and collaborate in the research and development and technology innovation with an eligible business located in this state.

ii. Has not received a credit under this section in the past calendar year.

(e) "Research and development" means 1 of the following:

i. Translational research conducted with the objective of attaining a specific benefit or to solve a practical problem.

ii. Activity that seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specified problem, question, or issue, with high potential for commercial application to create jobs in this state.

<u>Section 409. MCL 208.1409</u> Motor Sports Entertainment Complex Credit. Infield renovation, grandstand and infrastructure upgrades; tax credit; limitations; capital expenditures; definitions.

(1) For tax years that begin on or after January 1, 2008 and end before January 1, 2013, an eligible taxpayer may claim a credit against the tax imposed by this act equal to the amount of capital expenditures in this state on infield renovation, grandstand and infrastructure upgrades, and any other construction and upgrades, subject to the following:

(a) For the 2008 through 2010 tax years, the credit shall not exceed $2,100,000.00 or the taxpayer's tax liability under this act, whichever is less.

(b) For the 2011 through the 2012 tax years, the credit shall not exceed $1,580,000.00 or the taxpayer's tax liability under this act, whichever is less.

(2) Subject to the limitation provided under t his subsection, for tax years that begin on or after December 1, 2012 and end before January 1, 2017, an eligible taxpayer may claim a credit against the tax imposed by this act equal to the amount of capital expenditures in this state on infield renovation, grandstand and infrastructure upgrades, and any other construction and upgrades. The credit allowed under this subsection shall not exceed $1,580,000.00 or the taxpayer's tax liability under this act before the calculation of the credit allowed under subsection (3), whichever is less.

(3) In addition to the credit allowed under subsection (1), for the 2009 tax year an eligible taxpayer may claim a credit against the tax imposed by this act equal to 50% of the amount of necessary expenditures in this state incurred including any professional fees, additional police officers, and any traffic management devices, to ensure traffic and pedestrian safety while hosting the requisite motorsports events each calendar year. For the 2010 tax year and each tax year after 2010, an eligible taxpayer may claim a credit against the tax imposed by this act equal to all of the necessary expenditures in this state incurred including any professional fees, additional police officers, and any traffic management devices, to ensure traffic and pedestrian safety while hosting the requisite motorsports events each calendar year. If the amount of the credit allowed under this subsection exceeds the tax liability of the taxpayer for the tax year that excess shall be refunded.

(4) To be eligible to cliam the credit allowed under subsection (1), an eligible taxpayer shall expend at least $30,000,000.00 on capital expenditures before January 1, 2011. To be eligible to claim the credit allowed under subsection (2), an eligible taxpayer shall, in addition to the

expenditures required to claim the credit under subsection (1), expend, at a minimum, an additional $32,000,000.00 on capital expenditures as follows:

(a) At least $10,000,000.00 after December 31, 2010 and before January 1, 2013.

(b) Including the amount expended under subdivision (A), a cumulative total of at least $32,000,000.00 after December 31, 2010 and before January 1, 2016.

(5) As used in this section:

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

i. A person who owns and operates a motorsports entertainment complex and has at least 2 days of motorsports events each calendar year which shall be comparable to NASCAR Nextel cup events held in 2007 or their successor events.

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

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

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

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

ii. Has at least 6 scheduled days of motorsports events each calendar year.

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

iv. Engages in tourism promotion.

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

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

(d) "Sanctioning body" means the American motorcycle association (AMA); auto racing club of America (ARCA); championship auto racing teams (CART); grand American road racing association (GRAND AM); Indy racing league (IRL);

national association for stock car auto racing (NASCAR); national hot rod association (NHRA); professional sports car racing (PSR); sports car club of America (SCCA); United States auto club (USAC); Michigan state promoters association; or any successor organization or any other nationally or internationally recognized governing body of motorsports that establishes an annual schedule of motorsports events and grants rights to conduct the events, that has established and administers rules and regulations governing all participants involved in the events and all persons conducting the events, and that requires certain liability assurances, including insurance.

Section 410. MCL 208.1410 Professional Sports Facility or Stadium Credit. Tax credit; "eligible taxpayer" defined.

(1) For tax years that begin on or after January 1, 2008 and end before January 1, 2013, an eligible taxpayer may claim a credit against the tax imposed by this act equal to the following:

(a) For the 2008 through 2010 tax years, 65% of the eligible taxpayer's total tax liability imposed under this act not to exceed $1,700,000.00.

(b) For the 2011 tax year, 45% of the eligible taxpayer's total tax liability imposed under this act not to exceed $1,180,000.00.

(c) For the 2012 tax year, 25% of the eligible taxpayer's total tax liability imposed under this act not to exceed $650,000.00.

(2) As used in this section, "eligible taxpayer" means a taxpayer that satisfies each of the following:

(a) Is, collectively or individually, including through affiliated companies, an owner, operator, manager, licensee, lessee, or tenant of more than 1 facility or stadium in this state, including grounds and ancillary facilities that has a capacity of at least 14,000 patrons per facility and is primarily used for professional sporting events or other entertainment.

(b) The owner, operator, manager, licensee, lessee, or tenant as described in subdivision (a) has made a capital investment of not less than $125,000,000.00, collectively or individually, including through affiliated companies, into the construction cost of a facility or stadium for which the taxpayer qualifies for this credit.

(c) The owner, operator, manager, licensee, lessee, or tenant as described in subdivision (a) has not received proceeds from a state appropriation or a public bond issue from a local unit of government or public authority to assist in the construction or debt retirement of the facility, excluding a tax abatement, other waiver of a state or local tax or fee, or a state or local tax or fee from a public entity for road or infrastructure assistance.

Section 410a. MCL 208.1410a Professional Sports Facility or Stadium Credit. Tax credit; "eligible taxpayer" defined.

(1) For tax years that begin on or after January 1, 2008 and end before January 1, 2013, an eligible taxpayer may claim a credit against the tax imposed by this act equal to the following:

(a) For the 2008 through 2010 tax years, 65% of the eligible taxpayer's total tax liability imposed under this act not to exceed $1,700,000.00.

(b) For the 2011 tax year, 45% of the eligible taxpayer's total tax liability imposed under this act not to exceed $1,180,000.00.

(c) For the 2012 tax year, 25% of the eligible taxpayer's total tax liability imposed under this act not to exceed $650,000.00.

(2) As used in this section, "eligible taxpayer" means a taxpayer that is, collectively or individually, including through affiliated companies, an owner, operator, manager, licensee, lessee, or tenant of more than 1 facility or stadium in this state, including grounds and ancillary facilities, that has a capacity of at least 14,000 patrons per facility and is primarily used for professional sporting events or other entertainment, and that has made a capital investment of not less than $250,000,000.00, collectively or individually, including through affiliated companies, into the construction cost of a facility or stadium for which the taxpayer qualifies for this credit.

Section 411. MCL 208.1411 Exemption Smoothing Credit. Tax credit; gross receipts greater than $350,000.00 but less than $700,000.00.

A taxpayer whose gross receipts allocated or apportioned to this state are greater than $350,000.00 but less than $700,000.00, may claim a credit against the tax imposed under this act equal to the tax liability after the credit under section 417 multiplied by a fraction the numerator of which is the difference between the person's allocated or apportioned gross receipts and $700,000.00 and the denominator of which is $350,000.00.

Section 413. MCL 208.1413 Personal Property Tax Credit. Tax credit; certain eligible personal property, eligible telephone personal property, and eligible natural gas pipeline property; filing; refund; definitions.

(1) Subject to subsection (2), a taxpayer may claim a credit against the tax imposed by this act equal to the following:

(a) For property taxes levied after December 31, 2007, 35% of the amount paid for property taxes on eligible personal property in the tax year.

(b) Twenty-three percent of the amount paid for property taxes levied on eligible telephone personal property in the 2008 tax year and 13.5% of the amount paid

for property taxes levied on eligible telephone personal property in subsequent tax years.

(c) For property taxes levied after December 31, 2007, 10% of the amount paid for property taxes on eligible natural gas pipeline property in the tax year.

(2) To qualify for the credit under subsection (1), the taxpayer shall file, if applicable, within the time prescribed each of the following:

(a) The statement of assessable personal property prepared pursuant to section 19 of the general property tax act, 1893 PA 206, MCL 211.19, identifying the eligible personal property or eligible natural gas pipeline property, or both, for which the credit under subsection (1) is claimed.

(b) The annual report filed under section 6 of 1905 PA 282, MCL 207.6, identifying the eligible telephone personal property for which the credit under subsection (1) is claimed.

(c) The assessment or bill issued to and paid by the taxpayer for the eligible personal property, eligible natural gas pipeline property, or eligible telephone property for which the credit under subsection (1) is claimed.

(3) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall be refunded.

(4) As used in this section:

(a) "Eligible natural gas pipeline property" means natural gas pipelines that are classified as utility personal property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, and are subject to regulation under the natural gas act, 15 USC 717 to 717z.

(b) "Eligible personal property" means personal property that is classified as industrial personal property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, or in the case of personal property that is subject to 1974 PA 198, MCL 207.551 to 207.572, is situated on land classified as industrial real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

(c) "Eligible telephone personal property" means personal property of a telephone company subject to the tax levied under 1905 PA 282, MCL 207.1 to 207.21.

(d) "Property taxes" means any of the following:

i. Taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

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

iii. Taxes levied under the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

iv. Taxes levied under 1905 PA 282, MCL 207.1 to 207.21.

<u>Section 415. MCL 208.1415</u> Qualified Start-Up Company Credit. Qualified start-up business without business income for 2 consecutive years; tax credit; total number of years tax credit allowed; taxpayer without business activity in this state; compensation, directors' fees, or distributive shares; limitation; definitions.

(1) A taxpayer that meets the criteria under subsection (4) and that is a qualified start-up business that does not have business income for 2 consecutive tax years may claim a credit against the tax imposed under this act for the second of those 2 consecutive tax years and each immediately following consecutive tax year in which the taxpayer does not have business income equal to the taxpayer's tax liability for the tax year in which the taxpayer has no business income. If the taxpayer has business income in any tax year after the credit under this section is claimed, the taxpayer shall claim the credit under this section for any following tax year only if the taxpayer subsequently has no business income for 2 consecutive tax years. The taxpayer may claim the credit for the second of those 2 consecutive tax years and each immediately following consecutive tax year in which the taxpayer does not have business income.

(2) A credit under this section shall not be claimed for more than a total of 5 tax years.

(3) A taxpayer that qualified to claim the credit under section 31a of former 1975 PA 228 may claim the credit under this section for a total of 5 years, reduced by the number of years the taxpayer was eligible to claim the credit under section 31a of former 1975 PA 228.

(4) If a taxpayer that took the credit under this section or under former 1975 PA 228 has no business activity in this state and has any business activity outside of this state for any of the first 3 tax years after the last tax year for which it took the credit under this section, the taxpayer shall add to its tax liability the following amounts:

(a) If the taxpayer has no business activity in this state for the first tax year after the last tax year for which a credit under this section is claimed, 100% of the total of all credits claimed under this section.

(b) If the taxpayer has no business activity in this state for the second tax year after the last tax year for which a credit under this section is claimed, 67% of the total of all credits claimed under this section.

(c) If the taxpayer has no business activity for the third tax year after the last tax year for which a credit under this section is claimed, 33% of the total of all credits claimed under this section.

(5) For the tax year for which a credit under this section is claimed, compensation, directors' fees, or distributive shares paid by the taxpayer to any 1 of the following shall not exceed $135,000.00:

(a) A shareholder or officer of a corporation other than an S corporation.

(b) A partner of a partnership or limited liability partnership.

(c) A shareholder of an S corporation.

(d) A member of a limited liability corporation.

(e) An individual who is an owner.

(6) As used in this section:

(a) "Business income" means business income as defined in section 105 excluding funds received from small business innovation research grants and small business technology transfer programs established under the small business innovation development act of 1982, Public Law 97-219, reauthorized under the small business research and development enhancement act, Public Law 102-564, and subsequently reauthorized under the small business reauthorization act of 2000, Public Law 106-554.

(b) "Michigan economic development corporation" means the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, as amended, between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan strategic fund.

(c) "Qualified start-up business" means a business that meets all of the following criteria as certified annually by the Michigan economic development corporation:

i. Has fewer than 25 full-time equivalent employees.

ii. Has sales of less than $1,000,000.00 in the tax year for which the credit under this section is claimed.

iii. Research and development expenses make up at least 15% of its expenses in the tax year for which the credit under this section is claimed.

iv. Is not publicly traded.

v. Met 1 of the following criteria during 1 of the initial 2 consecutive tax years in which the qualified start-up business had no business income:

A. During the immediately preceding 7 years was in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19.

B. During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had employees and was liable under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

C. During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had not assumed successor liability under section 15(g) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.15.

(d) "Research and development" means qualified research as that term is defined in section 41(d) of the internal revenue code.

<u>Section 417. MCL 208.1417</u> Small Business Credit. Taxpayer with gross receipts not exceeding $20,000,000.00 and certain adjusted business income; disqualification; determination of reduction percentage; tax credit; reduced credit; fraction; filing and payment of tax; inclusion of compensation paid by professional employer organization to officers of client and employees; definitions.

(1) The credit provided in this section shall be taken after the credits under sections 403 and 405 and before any other credit under this act and is available to any taxpayer with gross receipts that do not exceed $20,000,000.00 and with adjusted business income minus the loss adjustment that does not exceed $1,300,000.00 as adjusted annually for inflation using the Detroit consumer price index and subject to the following:

(a) An individual, a partnership, a limited liability company, or a subchapter S corporation is disqualified if the individual, any 1 partner of the partnership, any 1 member of the limited liability company, or any 1 shareholder of the subchapter S corporation receives more than $180,000.00 as a distributive share of the

adjusted business income minus the loss adjustment of the individual, the partnership, the limited liability company, or the subchapter S corporation.

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

i. Compensation and directors' fees of a shareholder or officer exceed $180,000.00.

ii. The sum of the following amounts exceeds $180,000.00:

A. Compensation and directors' fees of a shareholder.

B. The product of the percentage of outstanding ownership or of outstanding stock owned by that shareholder multiplied by the difference between the sum of business income and, to the extent deducted in determining federal taxable income, a carryback or a carryover of a net operating loss or capital loss, minus the loss adjustment.

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

i. If an individual, any 1 partner of the partnership, any 1 member of the limited liability company, or any 1shareholder of the subchapter S corporation receives as a distributive share of adjusted business income minus the loss adjustment of the individual, partnership, limited liability company, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is more than $160,000.00 but less than $165,000.00, the credit is reduced by 20%.

ii. If an individual, any 1 partner of the partnership, any 1 member of the limited liability company, or any 1shareholder of the subchapter S corporation receives as a distributive share of adjusted business income minus the loss adjustment of the individual, partnership, limited liability company, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is $165,000.00 or more but less than $170,000.00, the credit is reduced by40%.

iii. If an individual, any 1 partner of the partnership, any 1 member of the limited liability company, or any 1shareholder of the subchapter S corporation receives as a distributive share of adjusted business income minus the loss adjustment of the individual, partnership, limited liability

company, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is $170,000.00 or more but less than $175,000.00, the credit is reduced by60%.

iv. If an individual, any 1 partner of the partnership, any 1 member of the limited liability company, or any 1shareholder of the subchapter S corporation receives as a distributive share of adjusted business income minus the loss adjustment of the individual, partnership, limited liability company, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is $175,000.00 or more but not in excess of $180,000.00, the credit is reduced by 80%.

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

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

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

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

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

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

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

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

(6) For a taxpayer that reports for a tax year less than 12 months, the amounts specified in this section for gross receipts, adjusted business income, and share of business income shall be

multiplied by a fraction, the numerator of which is the number of months in the tax year and the denominator of which is 12.

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

(8) Compensation paid by the professional employer organization to the officers of the client and to employees of the professional employer organization who are assigned or leased to and perform services for the client shall be included in determining eligibility of the client under this section.

(9) As used in this section:

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

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

i. Add compensation and directors' fees of active shareholders of a corporation.

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

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

iv. Add compensation and directors' fees of officers of a corporation.

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

(d) "Loss adjustment" means the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit under this section is being determined. In determining the loss adjustment for a tax year, a taxpayer is not required to use more of the taxpayer's total negative adjusted business income than the amount needed to qualify the taxpayer for the credit under this section. A taxpayer shall not be considered to have used any portion of the taxpayer's negative adjusted business income amount unless the portion used is necessary to qualify for the credit under this section. A taxpayer shall not reuse a negative adjusted business income amount used as a loss adjustment in a previous tax year or use a negative adjusted

business income amount from a year in which the taxpayer did not receive the credit under this section.

<u>Section 419. MCL 208.1419</u> Early Stage Venture Investment Credit. Tax voucher certificate; use; total amount; limitation; approval; application to Michigan early stage venture investment corporation; determination of eligibility; attachment of certificate and forms to annual return; payment of tax liability; transfer; use of excess amount; issuance of separate replacement tax voucher certificate; definitions.

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

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

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

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

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

(6) The Michigan early stage venture investment corporation shall determine which investors are eligible for tax vouchers and the amount of the tax vouchers allowed to each investor as

provided in the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2231 to 125.2263.

(7) The tax voucher certificate, and any completed transfer form that was issued pursuant to the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2231 to 125.2263, shall be attached to the taxpayer's annual return under this act. The department may prescribe and implement alternative methods of reporting and recording ownership, transfer, and utilization of tax voucher certificates that are not inconsistent with this act.

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

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

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

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

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

(10) If the amount of a tax voucher certificate held by a taxpayer or transferee exceeds the amount the taxpayer or transferee may use under subsection (8)(b) or (c) in a tax year, that excess may be used by the taxpayer or transferee to pay, subject to the limitations of subsection (8), any future liability of the taxpayer or transferee under this act.

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

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

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

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

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

(12) As used in this section:

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

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

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

Section 421. MCL 208.1421 Contribution Credits. Taxpayer not subject to MCL 206.1 to 206.532; tax credit; charitable contributions; limitation; refund; definitions.

(1) A taxpayer that is not subject to the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, may claim a credit against the tax imposed by this act, subject to the applicable limitations under this section, equal to 50% of the aggregate amount of charitable contributions made by the taxpayer during the tax year to all of the following:

(a) A public broadcast station as defined by 47 USC 397 that is not affiliated with an institution of higher education.

(b) A public library.

(c) An institution of higher learning located in this state or a nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of an institution of higher learning.

(d) The Michigan colleges foundation.

(e) The Michigan housing and community development fund created in section 3 of the Michigan housing and community development fund act, 2004 PA 479, MCL 125.2823.

(2) The tax credit allowed under this section for a donation under subsection (1)(c) is allowed only if the donee corporation, fund, foundation, trust, or association is controlled or approved and reviewed by the governing board of the institution of higher learning that benefits from

the charitable contributions. The nonprofit corporation, fund, foundation, trust, or association shall provide copies of its annual independently audited financial statements to the auditor general of this state and chairpersons of the appropriations committees of the senate and house of representatives.

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

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

(5) As used in this section:

(a) "Institution of higher learning" means an educational institution located within this state meeting all of the following requirements:

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

ii. Regularly offers education above the twelfth grade.

iii. Awards associate, bachelor's, master's, or doctoral degrees or any combination of those degrees or higher education credits acceptable for those degrees granted by other institutions of higher learning.

iv. Is recognized by the state board of education as an institution of higher learning and appears as an institution of higher learning in the annual publication of the department of education entitled "the directory of institutions of higher education".

(b) "Public library" means a public library as defined in section 2 of 1977 PA 89, MCL 397.552.

Section 422. MCL 208.1422 Art, Historical or Zoological Credit. Objects of Lasting Interest or Value Credit. Taxpayer making charitable contributions; tax credit; limitation; refund.

(1) Subject to subsection (2), a taxpayer that makes charitable contributions of $50,000.00 or more during the tax year to either of the following may claim a credit against the tax imposed by this act equal to 50% of the amount by which the aggregate amount of the charitable contributions to either of the following exceeds $50,000.00:

(a) A municipality or a nonprofit corporation affiliated with a municipality and an art, historical, or zoological institute for the purpose of benefiting the art, historical, or zoological institute.

(b) An institution devoted to the procurement, care, study, and display of objects of lasting interest or value.

(2) The credit allowed under this section for any tax year shall not exceed $100,000.00.

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

Section 423. MCL 208.1423 Worker Disability Compensation Act Credit. Taxpayer subject to worker's disability compensation act of 1969; tax credit; additional credit; refund.

(1) A taxpayer that is an employer that is subject to the worker's disability compensation act of 1969, 1969PA 317, MCL 418.101 to 418.941, may claim a credit against the tax imposed by this act an amount equal to the amount paid during that tax year by the taxpayer pursuant to section 352 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.352, as certified by the director of the bureau of worker's disability compensation pursuant to section 391(6) of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.391.

(2) A taxpayer that claims a credit under this section shall claim a portion of the credit allowed by this section equal to the payments made during a calendar quarter pursuant to section 352 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.352, against the estimated tax payments made under section 501. Any subsequent increase or decrease in the amount claimed for payments made by the insurer or self-insurer shall be reflected in the amount of the credit taken for the calendar quarter in which the amount of the adjustment is finalized.

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

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

Section 425. MCL 208.1425 Community Foundation or Educational Foundation Credit. Contribution to endowment fund of community foundation or education foundation; tax credit.

(1) Subject to the applicable limitations in this section, a taxpayer that does not claim a credit under section261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, may claim a credit against the tax imposed by this act equal to 50% of the amount the taxpayer contributed during the tax year to an endowment fund of a community foundation or an education foundation.

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

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

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

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

(6) As used in this section:

(a) "Community foundation" means an organization that applies for certification under subsection (4) on or before May 15 of the tax year for which the taxpayer is claiming the credit and that the department certifies for that tax year as meeting all of the following requirements:

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

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

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

iv. Is publicly supported as defined by the regulations of the United States department of treasury, 26CFR1.170A-9(e)(10). To maintain certification, the community foundation shall submit documentation to the department annually that demonstrates compliance with this subparagraph.

v. Is not a supporting organization as an organization is described in section 509(a)(3) of the internal revenue code and in 26 CFR 1.509(a)-4 and 1.509(a)-5.

vi. Meets the requirements for treatment as a single entity contained in 26 CFR 1.170A-9(e)(11).

vii. Except as provided in subsection (4), is incorporated or established as a trust at least 6 months before the beginning of the tax year for which the credit under this section is claimed and that has an endowment value of at least $100,000.00 before the expiration of 18 months after the community foundation is incorporated or established.

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

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

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

xi. In addition to all other criteria listed in this subsection for a community foundation that is incorporated or established after January 9, 2001, operates in a county of this state that was not served by a community foundation when the community foundation was incorporated or established or operates as a geographic component of an existing certified community foundation.

(b) "Education foundation" means an organization that applies for certification on or before April 1 of the tax year for which the taxpayer is claiming the credit that annually submits documentation to the department that demonstrates continued compliance with this subdivision, and that the department certifies for that tax year as meeting all of the following requirements:

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

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

iii. All funds, gifts, and bequests are exclusively dedicated to a school district or public school academy.

iv. Is publicly supported as defined by the regulations of the United States department of treasury, 26 CFR 1.170A-9(e)(10).

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

vi. Is incorporated or established as a trust at least 6 months before the beginning of the tax year for which the credit is claimed.

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

viii. Is subject to a program review each year and an independent financial audit every 3 years and provides copies of the reviews and audits to the department not more than 3 months after the review or audit is completed.

Section 426. MCL 208.1426 Individual or Family Development Account Program Act Credit. Contributions to reserve fund of fiduciary organization under the individual or family development account program act; tax credit; carrying forward excess credit; limitation; definitions.

(1) For the 2009 tax year and each tax year after 2009, a qualified financial institution or taxpayer may claim a credit against the tax imposed by this act equal to 75% of the contributions made by the qualified financial institution or by the taxpayer in the tax year to the reserve fund of a fiduciary organization pursuant to the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

(2) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the qualified financial institution or taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 10 tax years or until the excess credit is used up, whichever occurs first.

(3) The credits under this section and section 276 of the income tax act of 1967, 1967 PA 281, MCL 206.276, shall not exceed an annual cumulative maximum amount of $1,000,000.00. The determination of the maximum allowed under this subsection shall be made as provided in the individual or family development account program act, 2006 PA 513, MCL206.701 to 206.711.

(4) As used in this section:

(a) "Individual or family development account" means an account established pursuant to the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

(b) "Fiduciary organization" and "reserve fund" mean those terms as defined in the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

(c) "Qualified financial institution" means a financial institution as defined in the individual or family development account program act, 2006 PA 513, MCL 206.701 to 206.711.

Section 427. MCL 208.1427 Homeless Shelter or Food Bank Credit. Contribution to shelter for homeless persons, food kitchen, food bank, or other entity; tax credit.

(1) A taxpayer that does not claim a credit under section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, for a contribution to a shelter for homeless persons, food kitchen, food bank, or other entity, the primary purpose of which is to provide overnight accommodation, food, or meals to persons who are indigent, may claim a credit against the tax imposed by this act equal to 50% of the cash amount the taxpayer contributed during the tax year to a shelter for homeless persons, food kitchen, food bank, or other entity, the primary purpose of which is to provide overnight accommodation, food, or meals to persons who are indigent, if a contribution to that entity is tax deductible for the donor under the internal revenue code.

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

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

(4) An entity described in subsection (1) may request that the department determine whether a contribution to that entity qualifies for the credit under this section. The department shall make a determination and respond to a request no later than 30 days after the department receives the request.

(5) On or before July 1 of each year, the department shall report to the house of representatives committee on tax policy and the senate committee on finance the total amount of tax credits claimed under this section, section 425, and section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, for the immediately preceding tax year.

Section 429. MCL 208.1429 Next Energy and Alternative Energy Credit. Taxpayer certified under Michigan next energy authority act; tax credit; definitions.

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

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

(b) The credit allowed under subsection (5).

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

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

(b) Ten percent of the amount by which the taxpayer's adjusted qualified business activity performed in this state outside of a renaissance zone for the tax year exceeds the taxpayer's adjusted qualified business activity performed in this state outside of a renaissance zone for the 2001 tax year under section 39e of former 1975 PA 228.

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

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

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

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

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

(5) A taxpayer that is a qualified alternative energy entity may claim a credit for the taxpayer's qualified payroll amount. A taxpayer shall claim the credit under this subsection after all allowable nonrefundable credits under this act.

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

(7) As used in this section:

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

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

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

A. Business income.

B. The apportionment factor as determined under chapter 3.

C. The alternative energy business activity factor.

(b) "Alternative energy business activity factor" means a fraction, the numerator of which is the ratio of the value of the taxpayer's property used for qualified business activity and located in this state outside of a renaissance zone for the year for which the factor is being calculated to the value of all of the taxpayer's property located in this state for that year plus the ratio of the taxpayer's payroll for qualified business activity performed in this state outside of a renaissance zone for that year to all of the taxpayer's payroll in this state for that year and the denominator of which is 2.

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

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

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

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

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

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

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

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

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

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

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

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

ii. Biomass. As used in this subparagraph, "biomass" means residues from the wood and paper products industries, residues from food production and processing, trees and grasses grown specifically to be used as energy crops, and gaseous fuels produced from solid biomass, animal wastes, municipal waste, or landfills.

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

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

Section 430. MCL 208.1430 Photovoltaic Technology Credit. Facility developing and manufacturing photovoltaic technology; tax credit.

(1) Except as otherwise provided under subsection (3) and subject to the limitations under subsection (2), for tax years that begin on or after January 1, 2009, a qualified taxpayer and an eligible taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will construct and operate in this state a new facility for development and manufacturing of photovoltaic energy, photovoltaic systems, or other

photovoltaic technology may claim a credit against the tax imposed by this act equal to 25% of the capital investments made by the taxpayer in that new facility during the tax year but not to exceed $15,000,000.00.

(2) The Michigan economic growth authority shall not enter into an agreement under this section after December 31, 2011. The total amount of credits allowed under this section for all tax years shall not exceed $75,000,000.00. An agreement shall specify all of the following:

(a) The amount of capital investment that will be made in a new facility engaged in the development and manufacturing of photovoltaic energy, photovoltaic systems, and other photovoltaic technology.

(b) The number of qualified new jobs at the facility at which the investment will be made.

(c) The total credit that may be claimed under this section.

(3) The Michigan economic growth authority may enter into 1 agreement with an eligible taxpayer for a credit under this section of more than $15,000,000.00 but not more than $25,000,000.00.

(4) Except as otherwise provided under this subsection, the credit allowed under this section shall be taken by a taxpayer in equal installments over 2 years beginning with the tax year in which the certification was issued. The Michigan economic growth authority may allow only 1 taxpayer with whom it has entered into an agreement for a credit under this section of $15,000,000.00 or less to claim the total amount of the credit allowed in the same tax year in which the certification was issued. If in any of those years the credit allowed under this section for the tax year exceeds the taxpayer's or assignee's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall be refunded.

(5) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the annual return filed under this act on which a credit under this section is claimed. The certificate required under this subsection shall state all of the following:

(a) The taxpayer is located in this state and engaged in the development and manufacturing of photovoltaic energy, photovoltaic systems, or other photovoltaic technology and qualifies for the credit under this section.

(b) The taxpayer's federal employer identification number or the Michigan department of treasury number assigned to the taxpayer and, for a taxpayer that is a unitary business group, the federal employer identification number or Michigan department of treasury number assigned to the member of the group engaged in this state in the development and manufacturing of photovoltaic energy, photovoltaic systems, or other photovoltaic technology.

(c) The total amount of capital investments made during the tax year and the amount of the credit under this section for which the taxpayer is allowed to claim for the designated tax year.

(6) A taxpayer or assignee that claims a credit under this section and subsequently fails to meet the requirements of this section or any other conditions established by the Michigan economic growth authority in the agreement provided for in this section in order to obtain a certificate for which the credit was claimed under this section may, as to be determined by the Michigan economic growth authority, have its credit reduced or terminated or have a percentage of the credit amount previously claimed under this section added back to the tax liability of the taxpayer in the tax year that the taxpayer or assignee fails to comply with this section.

(7) A taxpayer may assign all or a portion of a credit allowed under this section. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which a certificate is issued. However, a taxpayer may also convey the right to obtain an assignment of the credit under this section after an agreement has been approved by the Michigan economic growth authority and before a certificate has been issued. A taxpayer may claim a portion of a credit and assign the remaining credit amount. The credit assignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The Michigan economic growth authority or its designee shall review and issue a completed assignment certificate to the assignee. An assignee shall attach a copy of the completed assignment certificate to its annual return required under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. In addition to all other procedures and requirements under this section, the following apply:

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

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

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

(8) A taxpayer that has entered into an agreement with the Michigan economic growth authority for a credit under sections 432 through 432d is not eligible for the credit under this section.

(9) As used in this section:

(a) "Capital investment" means the cost, including fabrication and installation, paid or accrued in the tax year of property of a type that is, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the property is physically located in this state for use in a business activity in this state.

(b) "Eligible taxpayer" means a taxpayer that has entered an agreement to create at least 250 qualified new jobs and to make at least $100,000,000.00 in a qualified capital investment of which $25,000,000.00 shall be made prior to the issuance of a certificate under this section.

(c) "Full-time job" means a job performed by an individual for 35 hours or more each week and whose income and social security taxes are withheld by 1 or more of the following:

i. A qualified taxpayer or an eligible taxpayer.

ii. An employee leasing company on behalf of a qualified taxpayer or an eligible taxpayer.

iii. A professional employer organization on behalf of a qualified taxpayer or an eligible taxpayer.

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

(e) "Qualified new job" means a full-time job created by a qualified taxpayer or an eligible taxpayer at a facility or facilities that is in excess of the number of full-time jobs a qualified taxpayer or an eligible taxpayer maintained in this state or at a facility prior to the expansion or location, as determined by the authority.

(f) "Qualified taxpayer" means a taxpayer that has entered an agreement to create at least 500 qualified new jobs and to make at least $50,000,000.00 in a qualified capital investment of which $25,000,000.00 shall be made prior to the issuance of a certificate under this section.

(g) "Photovoltaic cells" means an integrated device consisting of layers of semiconductor materials and electric constructs capable of converting incident light directly into electricity.

(h) "Photovoltaic energy" means solar energy.

(i) "Photovoltaic modules" means an assembly of interconnected photovoltaic cells.

(j) "Photovoltaic systems" means solar energy devices composed of 1 or more photovoltaic cells or photovoltaic modules, and inverter or other power conditioning unit or photovoltaic technology designed to deliver power of a selected current and voltage, wires, and other electrical connectors in order to generate electricity, heat or cool a residential structure, provide hot water for use in a residential structure, or provide solar process heat. Batteries for power storage may also be included in photovoltaic systems.

(k) "Photovoltaic technology" means solar power technology that uses photovoltaic cells and modules to convert light from the sun directly into electricity. Photovoltaic technology includes equipment, component parts, materials, electronic devices, testing equipment, and other related systems that are specifically designed or fabricated and used primarily for 1 or more of the following:

i. The storage, generation, reformation, or distribution of clean fuels integrated within a photovoltaic system.

ii. The process of utilizing photovoltaic energy to generate electricity for use by consumers.

iii. "Property" means section 1245 property and section 1250 property as those terms are defined in sections 1245 and 1250 of the internal revenue code.

Section 431. MCL 208.1431 Michigan Economic Growth Authority (MEGA) Credit. Business authorized under Michigan economic growth authority; tax credit; amount; certificate; attachment to annual return; statement; number of years; refund; effect of failure to meet requirements or removal of new jobs from state; statement as to number of new jobs created in state; definitions.

(1) Except as otherwise provided under this subsection, for a period of time not to exceed 20 years as determined by the Michigan economic growth authority, a taxpayer that is an authorized business may claim a credit against the tax imposed by this act equal to the amount certified each year by the Michigan economic growth authority as follows:

(a) Except as otherwise provided under this subdivision, for an authorized business for the tax year, an amount not to exceed the payroll of the authorized business attributable to employees who perform qualified new jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate; beginning after April 28, 2008, for an authorized business for the tax year, an amount not to exceed the sum of the payroll and health care benefits of the authorized business attributable to employees who perform qualified new jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate.

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

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

(d) For an authorized business that is a qualified high-technology business, for a period of time not to exceed 7 years as determined by the Michigan economic growth authority, an amount not to exceed 200% of the sum of the payroll and health care benefits of the qualified high-technology business attributable to employees who perform qualified new jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, for the first 3 tax years of the credit, multiplied by the tax rate and, for each of the remaining tax years of the credit, an amount not to exceed 100% of the sum of the payroll and health care benefits of the qualified high-technology business attributable to employees who perform qualified new jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate.

(e) For an authorized business as determined under section 8(9) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an amount up to, but not to exceed 100% of, the sum of the payroll and health care benefits of the authorized business attributable to employees who perform retained jobs multiplied by a fraction, the numerator of which is the amount of new capital investment made at the facility and the denominator of which is the product of the number of retained jobs multiplied by $100,000.00, and then multiplied by the tax rate for the tax year.

(f) For an authorized business as determined under section 8(11) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an amount not to exceed 100% of the sum of the payroll and health care benefits of the authorized business attributable to employees who perform new full-time jobs and retained jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate for the tax year.

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

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

(a) The taxpayer is an authorized business.

(b) The amount of the credit under this section for the authorized business for the designated tax year.

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

(4) The Michigan economic growth authority may certify a credit under this section based on an agreement entered into prior to January 1, 2008 pursuant to section 37c of former 1975 PA 228. The number of years for which the credit may be claimed under this section shall equal the maximum number of years designated in the resolution reduced by the number of years for which a credit has been claimed or could have been claimed under section 37c of former 1975 PA 228.

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

(6) Except as otherwise provided under this subsection, a taxpayer that claims a credit under subsection (1) or section 37c or 37d of former 1975 PA 228, that has an agreement with the Michigan economic growth authority based on qualified new jobs as defined in section 3(q)(*ii*) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803, and that removes from this state 51% or more of those qualified new jobs within 3 years after the first year in which the taxpayer claims a credit described in this subsection shall pay to the department no later than 12 months after those qualified new jobs are removed from the state an amount equal to the total of all credits described in this subsection that were claimed by the taxpayer. Beginning after April 28, 2008, a taxpayer that claims a credit under subsection (1) and subsequently fails to meet the requirements of this section or any other conditions included in an agreement entered into with the Michigan economic growth authority in order to obtain a certificate for the credit claimed under this section or removes any of the qualified new jobs from this state during the term of the written agreement and for a period of years after the term of the written agreement, as determined by the Michigan economic growth authority, may have its credit reduced or terminated or have a percentage of the credit amount previously claimed under this section added back to the tax liability of the taxpayer in the tax year that the taxpayer fails to comply with this section or the agreement.

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

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

(9) For the 2010 calendar year and each calendar year after 2010, the total amount of all credits allowed to be claimed in the first year of all new written agreements approved in that calendar year under this section shall not exceed $95,000,000.00.

(10) For purposes of this section, taxpayer includes a person subject to the tax imposed under chapter 2A and a person subject to the tax imposed under chapter 2B.

(11) As used in this section:

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

(b) "Health care benefits" means all costs paid for a self-funded health care benefit plan or for an expense-incurred hospital, medical, or surgical policy or certificate, nonprofit health care corporation certificate, or health maintenance organization contract. Health care benefit does not include accident-only, credit, dental, or disability income insurance; long-term care insurance; coverage issued as a supplement to liability insurance; coverage only for a specified disease or illness; worker's compensation or similar insurance; or automobile medical payment insurance.

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

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

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

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

ii. The average number of full-time jobs at a facility created by an eligible business up to 90 days before becoming an authorized business that is in excess of the average number of full-time jobs that the business maintained in this state up to 90 days before becoming an authorized business, as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

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

<u>Section 431a. MCL 208.1431a</u> Anchor Company Payroll Credit. Tax credit; amount; percentage of qualified supplier's or customer's payroll attributable to employees performing qualified new jobs; determination by Michigan

economic growth authority; certificate; issuance; contents; failure to meet requirements or conditions; definitions.

(1) A qualified taxpayer may claim a credit against the tax imposed by this act equal to the sum of up to 100% of each qualified supplier's and qualified customer's payroll attributable to employees who perform qualified new jobs as determined by the Michigan economic growth authority, multiplied by the tax rate for the tax year and that credit may include each of the qualified supplier's and qualified customer's payroll described above for a period of up to 5 years as determined by the Michigan economic growth authority. If the credit allowed under this subsection exceeds the liability of the taxpayer for the tax year, the taxpayer may elect to have that portion that exceeds the tax liability of the taxpayer refunded or to have the excess carried forward to offset tax liability in subsequent years for 10 years or until it is used up, whichever occurs first. The Michigan economic growth authority shall not designate more than 5 new anchor companies in each calendar year and shall not approve more than 5 new credits in each calendar year under this subsection. An anchor company has 5 years from the date on which the anchor company is designated as an anchor company to seek certification from the Michigan economic growth authority as a qualified taxpayer for each qualified supplier and qualified customer that is included in the credit which that anchor company is seeking under this section. However, a credit shall not be provided for a tax year prior to the tax year during which the designation as an anchor company is made.

(2) The Michigan economic growth authority may also provide that qualified sales to a qualified customer shall not be considered in calculating the sales factor under this act for the tax year for which a credit is provided under this section. Not later than July 1 of each year, the Michigan economic growth authority shall disclose to the senate majority leader or his or her designee, the speaker of the house of representatives or his or her designee, and the chairperson of each standing committee of the house of representatives and the senate that primarily addresses and has jurisdiction over issues pertaining to taxation, finance, and economic development the name and address of each qualified customer whose sales are not considered in the sales factor pursuant to this subsection.

(3) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the annual return filed under this act on which the credit under this section is claimed. The certificate required by this subsection shall state all of the following:

(a) The taxpayer is a qualified taxpayer and the date on which the taxpayer was designated as an anchor company.

(b) The amount of the credit under this section for the qualified taxpayer for the designated tax year.

(c) The amount of the qualified sales to a qualified customer.

(d) The taxpayer's federal employer identification number or the Michigan department of treasury number assigned to the taxpayer.

(4) A qualified taxpayer that claims a credit under this section and subsequently fails to meet the requirements of this section or any other conditions included in an agreement entered into with the Michigan economic growth authority in order to obtain a certificate for which the credit was under this section may, as to be determined by the Michigan economic growth authority, have its credit reduced or terminated or have a percentage of the credit amount previously claimed under this section added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with this section or the agreement.

(5) A credit under this section may be taken after all other allowable nonrefundable credits under this act.

(6) As used in this section:

(a) "Anchor company" means a qualified high-technology business that is an integral part of a high-technology activity and that has the ability or potential ability to influence business decisions and site location of qualified suppliers and customers.

(b) "Business", "qualified high-technology activity", and "qualified high-technology business" mean those terms as defined in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(c) "Full-time job" means a job performed by an individual for 35 hours or more each week and whose income and social security taxes are withheld by 1 or more of the following:

i. A qualified supplier or qualified customer.

ii. An employee leasing company on behalf of a qualified supplier or qualified customer.

iii. A professional employer organization on behalf of a qualified supplier or qualified customer.

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

(e) "Qualified new job" means a full-time job created by a qualified supplier or qualified customer at a facility or facilities that is in excess of the number of full-time jobs a qualified supplier or qualified customer maintained in this state or at a facility prior to the expansion or location, as determined by the authority.

(f) "Qualified sales to a qualified customer" means sales to a qualified customer that are in excess of the Michigan sales to the customer prior to the year of expansion or location within this state as determined by the Michigan economic growth

authority and that would otherwise be included in the calculation of the sales factor under this act.

(g) "Qualified supplier" and "qualified customer" means a business that opens a new location in this state, a business that locates in this state, or an existing business located in this state that expands its business as a result of an anchor company and satisfies prior to the issuance of a certificate and at the time specified in the agreement with the qualified taxpayer, as certified by the Michigan economic growth authority, each of the following:

i. Has financial transactions with the anchor company.

ii. Sells a critical or unique component or technology necessary for the anchor company to market a finished product as the result of a commercial relationship with the anchor company or buys a critical or unique component from the anchor company.

iii. Has created more than 10 qualified new jobs.

iv. Has made an investment of at least $1,000,000.00 as certified by the Michigan economic growth authority.

(h) "Qualified taxpayer" means a taxpayer that was designated by the Michigan economic growth authority as an anchor company within the last 5 years and that has influenced a qualified supplier or qualified customer to open, locate, or expand in this state.

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

Section 431b. MCL 208.1431b Federal Contract Procurement Credit. Agreement with person or group of persons; tax credit; factors to be considered by Michigan economic growth authority; contents of agreement; amount of credit; issuance of certificate of designation; statement; definitions.

(1) Upon application, a person or group of persons acting collectively may enter into an agreement with the Michigan economic growth authority for a credit under this section. In determining whether to enter into an agreement with a person or group of persons, the authority shall consider the following factors:

(a) The number of qualified new jobs or products, or both, to be created or maintained as a result of winning a federal procurement contract offered by the United States department of defense, department of energy, or department of homeland security.

(b) The potential impact of the expansion, retention, or location on the economy of Michigan if the person or group of persons acting collectively is awarded the federal contract described under subdivision (a).

(c) The number of out-of-state persons bidding against the person or group of persons acting collectively for the federal contract described under subdivision (a).

(d) The total capital investment or new capital investment the person or group of persons acting collectively will make to win and maintain the federal contract described under subdivision (a).

(2) The agreement required under subsection (1) shall include, but is not limited to, all of the following:

(a) A description of the federal contract for which the person or group of persons acting collectively intends to bid.

(b) A description of the person's or group's expansion, retention, or location that is necessary if awarded the federal contract that is the subject of the agreement.

(c) Conditions upon which the person or group of persons acting collectively is designated a qualified taxpayer under this section.

(d) A statement by the person or group of persons acting collectively that a violation of the written agreement may result in the revocation of the designation as a qualified taxpayer and the loss or reduction of future credits under this section.

(e) A statement by the person or group of persons acting collectively that a misrepresentation in the application may result in the revocation of the designation as a qualified taxpayer and the refund of credits received under this section.

(f) A method for measuring qualified new jobs before and after the award of a federal contract and the expansion, retention, or location of the person or group of persons acting collectively in this state as a result of winning the federal contract.

(3) A qualified taxpayer may claim a credit against the tax imposed by this act in an amount up to 100% of the qualified taxpayer's payroll attributable to employees who perform qualified new jobs created as a result of the person or group of persons acting collectively being awarded a federal procurement contract by the United States department of defense, department of energy, or department of homeland security as determined by the Michigan economic growth authority, multiplied by the tax rate for the tax year for a period of up to 7 years or the term of the contract, whichever is less, as determined by the Michigan economic growth authority. If the qualified taxpayer is a group of persons acting collectively, the Michigan economic growth authority shall determine the amount of the credit which each person included in the group is allowed to claim by multiplying the amount of the credit allowed collectively by the qualified taxpayer by a fraction, the numerator of which is the

person's payroll attributable to employees who perform qualified new jobs and the denominator of which is 100% of the qualified taxpayer's payroll attributable to employees who perform qualified new jobs, and then certifying the amount of the credit that each person is allowed to claim respectively. If the credit allowed under this subsection exceeds the liability of the taxpayer for the tax year, the taxpayer may elect to have that portion that exceeds the tax liability of the taxpayer refunded or to have the excess carried forward to offset tax liability in subsequent years for 10 years or until it is used up, whichever occurs first. The Michigan economic growth authority shall not execute more than 10 new written agreements each year. If a qualified taxpayer is awarded a credit under this section, any subsequent credits awarded to that qualified taxpayer shall not be included in determining the yearly limit of 10 new agreements under this subsection.

(4) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued the taxpayer a certificate of designation as a qualified taxpayer. However, a credit shall not be provided for a tax year prior to the tax year during which the certification is made. The taxpayer shall attach the certificate to the annual return filed under this act on which the credit under this section is claimed. The certificate required by this subsection shall state all of the following:

(a) The taxpayer is a qualified taxpayer.

(b) The amount of the credit under this section for the qualified taxpayer for the designated tax year or, if the qualified taxpayer is a group of persons, the percentage of the amount of the credit that the taxpayer is allowed to claim for the designated tax year.

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

(5) As used in this section:

(a) "Full-time job" means a job performed by an individual for 35 hours or more each week and whose income and social security taxes are withheld by 1 or more of the following:

i. A taxpayer.

ii. An employee leasing company on behalf of a taxpayer.

iii. A professional employer organization on behalf of a taxpayer.

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

(c) "Qualified new job" means a full-time job created by a qualified taxpayer at a facility or facilities that is in excess of the number of full-time jobs the qualified taxpayer maintained in this state or at a facility prior to being awarded the federal

procurement contract and the expansion or location, as determined by the authority.

(d) "Qualified taxpayer" means a person that individually satisfies each of the following or a group of 1 or more persons that enter into a cooperative or informal agreement to act collectively and satisfy each of the following:

i. Has entered into an agreement with the authority as described under this section.

ii. Has submitted a competitive bid for a federal procurement contract offered by the United States department of defense, department of energy, or department of homeland security.

iii. Has been awarded the federal contract for which the person or group of persons acting collectively submitted a bid under subparagraph (ii).

iv. Has created a minimum of 25 qualified new jobs.

Section 431c. MCL 208.1433 Anchor Company 5% Credit. Designation as anchor company; tax credit; issuance of certificate by Michigan economic growth authority; contents; failure to meet requirements or conditions; disposition of excess credit; definitions.

(1) Except as otherwise provided under this section, a qualified taxpayer may claim a credit against the tax imposed by this act equal to the sum of up to 5.0% of the taxable value of each qualified supplier's or qualified customer's taxable property that is located within the 10-mile radius of the qualified taxpayer or is located in the same county or a county adjacent to the qualified taxpayer and within an existing industrial site that is approved by the Michigan economic growth authority and that is subject to collection of general ad valorem taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, and that credit may be based upon each of the qualified supplier's and qualified customer's taxable value described above in this subsection for a period of up to 5 years, as determined by the Michigan economic growth authority. If a qualified supplier's or qualified customer's taxable property that is located within the 10-mile radius of the qualified taxpayer or is located in the same county or a county adjacent to the qualified taxpayer and within an existing industrial site that is approved by the Michigan economic growth authority is subject to the specific tax levied under 1974 PA 198, MCL 207.551 to 207.572, the qualified taxpayer may only include up to 2.5% of the taxable value of that property in the calculation of the amount of the credit allowed under this section.

(2) The Michigan economic growth authority shall not designate more than 5 new anchor companies in each calendar year and shall not approve more than 5 new credits in each calendar year under this subsection. An anchor company has 5 years from the date on which the anchor company designation occurs to seek certification from the Michigan economic growth authority as a qualified taxpayer for each qualified supplier or qualified customer that is included in the credit which that anchor company is seeking under this section. However, a

credit shall not be provided for a tax year prior to the tax year during which the designation as an anchor company is made.

(3) The Michigan economic growth authority may provide that qualified sales to a qualified customer shall not be considered in calculating the sales factor under this act for the tax year for which a credit is provided under this section. Not later than July 1 of each year, the Michigan economic growth authority shall disclose to the senate majority leader or his or her designee, the speaker of the house of representatives or his or her designee, and the chairperson of each standing committee of the house of representatives and the senate that primarily addresses and has jurisdiction over issues pertaining to taxation, finance, and economic development the name and address of each qualified customer whose sales are not considered in the sales factor pursuant to this subsection.

(4) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The qualified taxpayer shall attach the certificate to the annual return filed under this act on which the credit under this section is claimed. The certificate required by this subsection shall state all of the following:

(a) The taxpayer is a qualified taxpayer and the date on which the taxpayer was designated as an anchor company.

(b) The amount of the credit under this section for the taxpayer for the designated tax year.

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

(d) Subject to subsection (3), the amount of the qualified sales to a qualified customer.

(5) A qualified taxpayer that claims a credit under this section and subsequently fails to meet the requirements of this section or any other conditions included in an agreement entered into with the Michigan economic growth authority in order to obtain a certificate for which the credit was claimed under this section may, as to be determined by the Michigan economic growth authority, have its credit reduced or terminated or have a percentage of the credit amount previously claimed under this section added back to the tax liability of the qualified taxpayer in the year that the qualified taxpayer fails to comply with this section or the agreement.

(6) If the credit allowed under this subsection exceeds the liability of the qualified taxpayer for the tax year, the qualified taxpayer may elect to have that portion that exceeds the tax liability of the qualified taxpayer refunded or to have the excess carried forward to offset tax liability in subsequent years for 5 years or until it is used up, whichever occurs first.

(7) A credit under this section may be taken after all other allowable nonrefundable credits under this act.

(8) As used in this section:

(a) "Anchor company" means a qualified high-technology business that is an integral part of a high-technology activity and that has the ability or potential ability to influence business decisions and site location of qualified suppliers and qualified customers.

(b) "Business", "qualified high-technology activity", and "qualified high-technology business" mean those terms as defined in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(c) "Full-time job" means a job performed by an individual for 35 hours or more each week and whose income and social security taxes are withheld by 1 or more of the following:

i. A qualified supplier or qualified customer.

ii. An employee leasing company on behalf of a qualified supplier or qualified customer.

iii. A professional employer organization on behalf of a qualified supplier or qualified customer.

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

(e) "Qualified new job" means a full-time job created by a qualified supplier or qualified customer at a facility or facilities that is in excess of the number of full-time jobs a qualified supplier or qualified customer maintained in this state or facility prior to the expansion or location, as determined by the authority.

(f) "Qualified sales to a qualified customer" means sales to a qualified customer that are in excess of the Michigan sales to the customer prior to the year of expansion or location within this state as determined by the Michigan economic growth authority and that would otherwise be included in the calculation of the sales factor under this act.

(g) "Qualified supplier" and "qualified customer" mean a business that opens a new location in this state, a business that locates in this state, or an existing business located in this state that expands its business as a result of an anchor company and satisfies prior to the issuance of a certificate and at the time specified in the agreement with the qualified taxpayer, as certified by the Michigan economic growth authority, each of the following:

i. Has financial transactions with the anchor company.

ii. Sells a critical or unique component or technology necessary for the anchor company to market a finished product as the result of a commercial relationship with the anchor company or buys a critical or unique component from the anchor company.

iii. Has created more than 10 qualified new jobs.

iv. Has made an investment of at least $1,000,000.00 as certified by the Michigan economic growth authority.

(h) "Qualified taxpayer" means a taxpayer that was designated by the Michigan economic growth authority as an anchor company within the last 5 years and that has influenced a qualified supplier or qualified customer to open, locate, or expand in this state and conduct business activity within a 10-mile radius of the anchor company or within the same county or a county adjacent to the taxpayer and within an existing industrial site that is approved by the Michigan economic growth authority.

<u>Section 432. MCL 208.1432</u> Polycrystalline Silicon Credit. Agreement to manufacture polycrystalline silicone for up to12 years. Tax credit for a portion of energy consumption costs consumed in Michigan in the manufacturing of polycrystalline silicon for solar cells and semiconductor microchips; certification; definitions.

(1) A qualified taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the qualified taxpayer will construct and operate a new or expanded facility described in the agreement under this section for the manufacture of polycrystalline silicon may claim a credit against the tax imposed by this act for a period of 12 years calculated as provided in sections 432a through 432d and claimed for the tax years as provided in sections 432a through 432d. This credit shall be taken after all other credits provided under this act.

(2) The Michigan economic growth authority shall not enter into more than 1 agreement under this section and shall not enter into an agreement after December 31, 2008.

(3) A qualified taxpayer shall not claim a credit under sections 432a through 432d unless the Michigan economic growth authority has issued a certificate to that taxpayer. The qualified taxpayer shall attach the certificate to the annual return filed under this act on which a credit under this section is claimed.

(4) The certificate required under subsection (3) shall state all of the following:

(a) The taxpayer is a qualified taxpayer.

(b) The amount of the credit under this section for the qualified taxpayer for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan department of treasury number assigned to the taxpayer and for a taxpayer that is a unitary business group, the federal employer identification number or Michigan department of treasury number assigned to the member of the group engaged in this state in the manufacture of polycrystalline silicon for solar cells and semiconductor microchips.

(5) For purposes of this section and sections 432a through 432d:

(a) "Guaranteed cost of electricity" means the following:

i. For a tax year that begins after December 31, 2011 and before January 1, 2019, 4.85 cents per kilowatt hour.

ii. For a tax year that begins after December 31, 2018 and before January 1, 2021, 5.20 cents per kilowatt hour.

iii. For a tax year that begins after December 31, 2020 and before January 1, 2024, 6.00 cents per kilowatt hour.

(b) "Projected cost of electricity" means the following:

i. For a tax year that begins after December 31, 2011 and before January 1, 2013, 6.49 cents per kilowatt hour.

ii. For a tax year that begins after December 31, 2012 and before January 1, 2014, 6.66 cents per kilowatt hour.

iii. For a tax year that begins after December 31, 2013 and before January 1, 2015, 6.84 cents per kilowatt hour.

iv. For a tax year that begins after December 31, 2014 and before January 1, 2016, 7.02 cents per kilowatt hour.

v. For a tax year that begins after December 31, 2015 and before January 1, 2017, 7.20 cents per kilowatt hour.

vi. For a tax year that begins after December 31, 2016 and before January 1, 2018, 7.40 cents per kilowatt hour.

vii. For a tax year that begins after December 31, 2017 and before January 1, 2019, 7.59 cents per kilowatt hour.

viii. For a tax year that begins after December 31, 2018 and before January 1, 2020, 7.79 cents per kilowatt hour.

ix. For a tax year that begins after December 31, 2019 and before January 1, 2021, 8.00 cents per kilowatt hour.

x. For a tax year that begins after December 31, 2020 and before January 1, 2022, 8.21 cents per kilowatt hour.

xi. For a tax year that begins after December 31, 2021 and before January 1, 2023, 8.43 cents per kilowatt hour.

xii. For a tax year that begins after December 31, 2022 and before January 1, 2024, 8.65 cents per kilowatt hour.

(c) "Qualified taxpayer" means a taxpayer whose business activity conducted in this state includes the manufacturing of polycrystalline silicon for solar cells and semiconductor microchips.

Section 432a. MCL 208.1432a Polycrystalline Silicon Credit. 2012 tax year through tax year 2015 for a manufacturer of polycrystalline silicon equal to 25% of qualified consumption of electricity times the difference between the projected cost of electricity and the guaranteed cost of electricity; tax credit; electricity; "qualified consumption of electricity" defined.

(1) For tax years that begin after December 31, 2011 and before January 1, 2016, a qualified taxpayer that has received a certificate under section 432 may claim a credit equal to the product obtained by multiplying the qualified consumption of electricity times the difference between the guaranteed cost of electricity and the actual delivered price of electricity billed to the qualified taxpayer under a tariff rate approved by the public service commission or the projected cost of electricity, whichever is less.

(2) If the credit allowed under this section exceeds the tax liability of the qualified taxpayer for the tax year, the qualified taxpayer may elect to have that portion that exceeds the tax liability of the qualified taxpayer refunded or to have the excess carried forward to offset the tax liability in subsequent years for 10 years or until used up, whichever occurs first.

(3) As used in this section, "qualified consumption of electricity" means up to 1,445,400 megawatt hours of electricity consumed during the tax year at a facility described by an agreement entered into under section 432.

Section 432b. MCL 208.1432b Polycrystalline Silicon Credit. 2016 tax year through tax year 2021 for a manufacturer of polycrystalline silicon equal to 25% of qualified consumption of electricity times the difference between the projected cost of electricity and the guaranteed cost of electricity; tax credit; electricity; "qualified consumption of electricity" defined.

(1) For tax years that begin after December 31, 2015 and before January 1, 2022, a qualified taxpayer that has received a certificate under section 432 may claim a credit equal to the product obtained by multiplying the qualified consumption of electricity times the difference between the projected cost of electricity and the guaranteed cost of electricity.

(2) If the credit allowed under this section exceeds the tax liability of the qualified taxpayer for the tax year, the qualified taxpayer may elect to have that portion that exceeds the tax liability of the qualified taxpayer refunded or to have the excess carried forward to offset the tax liability in subsequent years for 10 years or until used up, whichever occurs first.

(3) As used in this section, "qualified consumption of electricity" means up to 1,445,400 megawatt hours of electricity consumed during the tax year at a facility described by an agreement entered into under section 432.

Section 432c. MCL 208.1432c Polycrystalline Silicon Credit. 2022 tax year for a manufacturer of polycrystalline silicon equal to 25% of qualified consumption of electricity times the difference between the projected cost of electricity and the guaranteed cost of electricity; tax credit; electricity; "qualified consumption of electricity" defined.

(1) For the 2022 tax year, a qualified taxpayer that has received a certificate under section 432 may claim a credit equal to the product obtained by multiplying 50% of the qualified consumption of electricity times the difference between the projected cost of electricity and the guaranteed cost of electricity.

(2) If the credit allowed under this section exceeds the tax liability of the qualified taxpayer for the tax year, the qualified taxpayer may elect to have that portion that exceeds the tax liability of the qualified taxpayer refunded or to have the excess carried forward to offset the tax liability in subsequent years for 10 years or until used up, whichever occurs first.

(3) As used in this section, "qualified consumption of electricity" means up to 1,445,400 megawatt hours of electricity consumed during the tax year at a facility described by an agreement entered into under section 432.

Section 432d. MCL 208.1432d Polycrystalline Silicon Credit, 2023 tax year for a manufacturer of polycrystalline silicon equal to 25% of qualified consumption of electricity times the difference between the projected cost of electricity and the guaranteed cost of electricity; tax credit; electricity; "qualified consumption of electricity" defined.

(1) For the 2023 tax year, a qualified taxpayer that has received a certificate under section 432 may claim a credit equal to the product obtained by multiplying 25% of the qualified consumption of electricity times the difference between the projected cost of electricity and the guaranteed cost of electricity.

(2) If the credit allowed under this section exceeds the tax liability of the qualified taxpayer for the tax year, the qualified taxpayer may elect to have that portion that exceeds the tax liability of the qualified taxpayer refunded or to have the excess carried forward to offset the tax liability in subsequent years for 10 years or until used up, whichever occurs first.

(3) As used in this section, "qualified consumption of electricity" means up to 1,445,400 megawatt hours of electricity consumed during the tax year at a facility described by an agreement entered into under section 432.

Section 433. MCL 208.1433 Renaissance Zone Credit. Business located in renaissance zone; tax credit; tax liability attributable to illegal activity; duration of credit; refund; employment or compensation to state employee member of state administrative board or renaissance zone review board prohibited; filing of annual return; business activity related to casino; definitions.

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

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

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

(c) For a taxpayer located and conducting business activity in a renaissance zone before December 31, 2002, the product of the following:

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

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

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

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

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

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

(5) A taxpayer that claims a credit under this section shall not employ, pay a speaker fee to, or provide any remuneration, compensation, or consideration to any person employed by the

state, the state administrative board created in 1921 PA 2, MCL 17.1 to 17.3, or the renaissance zone review board created in 1996 PA 376, MCL 125.2681 to 125.2696, whose employment relates or related in any way to the authorization or enforcement of the credit allowed under this section for any year in which the taxpayer claims a credit under this section and for the 3 years after the last year that a credit is claimed.

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

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

(8) For purposes of this section, taxpayer includes a person subject to the tax imposed under chapters 2A and 2B.

(9) As used in this section:

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

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

ii. For a partnership, limited liability company, S corporation, or individual, the amount determined under subparagraph(i) plus the product of the following as related to the taxpayer if greater than zero:

A. Business income.

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

C. The renaissance zone business activity factor.

(b) "Casino" means a casino regulated by this state pursuant to the Michigan gaming control and revenue act, 1996IL 1, MCL 432.201 to 432.226.

(c) "New property" means property that has not been subject to, or exempt from, the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and has not been subject to, or exempt from, ad valorem property

taxes levied in another state, except that receiving an exemption as inventory property does not disqualify property.

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

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

(f) "Renaissance zone business activity factor" means a fraction, the numerator of which is the ratio of the average value of the taxpayer's property located in a designated renaissance zone to the average value of the taxpayer's property in this state plus the ratio of the taxpayer's payroll for services performed in a designated renaissance zone to all of the taxpayer's payroll in this state and the denominator of which is 2.

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

Section 434. MCL 208.1434 Credits for Manufacture of High-Power Energy Batteries. Tax credits to stimulate domestic commercialization and affordability of high-power energy batteries; authority for Michigan economic growth authority to enter agreements; limitations; review board; specifications; issuance of certificate to taxpayer; definitions.

(1) The Michigan economic growth authority is authorized to enter into agreements to provide tax credits available under this section to stimulate the domestic commercialization and affordability of high-power energy batteries, the lack of which today is limiting hybrid, plug-in hybrid battery-electric, and fuel cell vehicle applications, and to help insure that job growth from battery technology and commercial production develops alongside advanced vehicle technology development and renewable power generation initiatives both within and outside the transportation sector.

(2) Subject to the limitations provided under this section, for tax years that begin on or after January 1, 2010 and end before January 1, 2015, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will manufacture plug-in traction battery packs in this state may claim a credit against the tax imposed by this act for the manufacture of those plug-in traction battery packs as provided in this section. The Michigan economic growth authority may enter into more than 1 agreement under this section. However, the total number of plug-in traction battery packs eligible for all credits under all agreements allowed under this section shall not exceed the number of plug-in traction battery packs eligible for a credit as provided in this section and at least 1 agreement shall make capital investments of not less than $200,000,000.00 not later than December 31, 2012. A taxpayer shall not claim a credit under this section for more than 3 years. The total of all credits allowed under this section shall be as follows:

(a) For tax years beginning after December 31, 2010 and ending before January 1, 2012, $500.00 for an equivalent of 4 kilowatt hours of battery capacity plus $125.00 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours of battery capacity not to exceed $2,000.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 20,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed $40,000,000.00.

(b) For tax years beginning after December 31, 2011 and ending before January 1, 2013, $375.00 for an equivalent of 4 kilowatt hours of battery capacity plus $93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours of battery capacity not to exceed $1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 40,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed $43,000,000.00. A single taxpayer shall not claim a credit for more than 25,000 plug-in traction battery pack units under this subdivision. The number of battery pack units not used for credits under subdivision (a) may be added to the total number of battery pack units for which a credit is available under this subdivision, and the credits for those units shall be calculated as described in subdivision (a) and shall be in addition to the maximums allowed for any 1 taxpayer under this subdivision or the total limits allowed under this subdivision.

(c) For tax years beginning after December 31, 2012 and ending before January 1, 2014, $375.00 for an equivalent of 4 kilowatt hours of battery capacity plus $93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours not to exceed $1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 40,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed $43,000,000.00. A single taxpayer shall not claim a credit for more than 25,000 plug-in traction battery pack units under this subdivision.

(d) For tax years beginning after December 31, 2013 and ending before January 1, 2015, $375.00 for an equivalent of 4 kilowatt hours of battery capacity plus $93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours not to exceed $1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 25,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed $9,000,000.00.

(3) For tax years that begin on or after January 1, 2012 and subject to the limitations of this subsection, a taxpayer may claim a credit of up to 75% of the qualified expenses for vehicle engineering in this state to support battery integration, prototyping, and launch expenses incurred for tax years that begin on or after January 1, 2009 and end before January 1, 2014. This credit shall not exceed $15,000,000.00 per year as agreed to and certified by the Michigan economic growth authority. Any expenses for which a credit is claimed under this

subsection shall not be included in costs and expenses used for credits available under sections 403 and 405. The Michigan economic growth authority may not authorize more than $135,000,000.00 in total credits to all taxpayers under this subsection. To claim the credit under this subsection, a taxpayer must manufacture a cumulative total of at least 1,000 motor vehicles that would qualify for the credit under section 30D of the internal revenue code and the credit shall be available to the taxpayer only for the following percentages of the total authorized annual expenses:

(a) In a tax year in which the taxpayer has manufactured a cumulative total of at least 1,000 motor vehicles and fewer than 2,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 20%.

(b) In a tax year in which the taxpayer has manufactured a cumulative total of at least 2,000 motor vehicles but fewer than 3,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 40%.

(c) In a tax year in which the taxpayer has manufactured a cumulative total of at least 3,000 motor vehicles but fewer than 4,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 60%.

(d) In a tax year in which the taxpayer has manufactured a cumulative total of at least 4,000 motor vehicles but fewer than 5,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 80%.

(e) In a tax year in which the taxpayer has manufactured a cumulative total of at least 5,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 100%.

(4) For tax years that begin on or after January 1, 2012 and end before January 1, 2015, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will increase its engineering activities in this state for advanced automotive battery technologies may claim a credit under this subsection. A taxpayer's qualified advanced battery engineering expenses for advanced automotive battery technologies shall exceed those expenses for the taxpayer's 2008 fiscal year to qualify for the credit under this subsection. The Michigan economic growth authority may enter into not more than 1 agreement for advanced battery engineering credits, and the total value of credits available under this subsection is limited to $30,000,000.00. The credits under this subsection shall be allowed as follows:

(a) Up to 75% of the total dollar amount of the qualified advanced battery engineering expenses of an authorized business incurred during tax years beginning on or after January 1, 2009 and ending before January 1, 2014. The taxpayer must submit to the Michigan economic growth authority an affidavit certifying the amount of qualified advanced battery engineering expenses for each year.

(b) Notwithstanding any other provision of this section, a taxpayer may claim no more than $10,000,000.00 in credits under this subsection in any tax year.

(c) The credits available under this subsection shall not be allowed if the taxpayer claims credits under subsection (2) for battery pack assembly for the tax year. Notwithstanding this limitation, the credits available under this subsection are in addition to any other incentives which may be authorized under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, for other related or unrelated projects including the vehicle research and development expenses authorized under subsection (3). Any expenses for which a credit is claimed under this subsection shall not be included in costs and expenses used for credits available under sections 403 and 405.

(5) A taxpayer that has entered into an agreement with the Michigan economic growth authority may claim a credit equal to 50% of the capital investment expenses for any tax year for the construction of an integrative cell manufacturing facility that includes anode and cathode manufacturing and cell assembly if the taxpayer will create not less than 300 new jobs in this state. Not more than 5 agreements may be entered into under this section, and the maximum allowable credit under each agreement shall not exceed $25,000,000.00 per year for no more than 4 years. No credit shall be claimed in a tax year beginning before 2012. However, tax credits may be based on expenses incurred in this state in prior years. The Michigan economic growth authority shall not adopt a resolution authorizing an agreement to provide credits under this subsection after March 31, 2010.

(6) A taxpayer that has entered into an agreement with the Michigan economic growth authority may claim a credit equal to 25% of the capital investment expenses for any tax year for the construction of a facility that will produce large scale batteries and manufacture integrated power management, smart control, and storage systems from 500 kilowatts to 100 megawatts if the taxpayer will create not fewer than 500 new jobs in this state and the taxpayer has received conventional financing, recovery zone facility bonds, or federal loan guarantees for a project that employs innovative energy efficiency, renewable energy, and advanced transmission and distribution technologies from the United States department of energy under section 1703 of Title XVII of the Energy Policy Act of 2005, 42 USC 16513. Not more than 1 agreement may be entered into under this subsection, and the maximum allowable credit under the agreement shall not exceed $25,000,000.00 per year for no more than 4 years. No credit shall be claimed in a tax year beginning before 2012. The Michigan economic growth authority shall not adopt a resolution after March 1, 2010.

(7) Subject to the limitation under subsection (8), for tax years that begin on or after January 1, 2012 and end before January 1, 2017, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will manufacture advanced lithium ion battery packs in this state may claim a credit against the tax imposed by this act the manufacture of those advanced lithium ion battery packs as follows:

(a) For a taxpayer that agrees to make capital investments in this state of not less than $250,000,000.00, to create at least 1,000 new jobs that shall include jobs that are transferred to this state from a foreign country, and to manufacture not less than 225,000 advanced lithium ion battery packs in this state, a total credit of not more than $26,000,000.00 per tax year for not more than 3 tax years. The

Michigan economic growth authority shall not adopt a resolution authorizing an agreement under this subdivision after March 1, 2010.

(b) For a taxpayer that agrees to make capital investments in this state of not less than $200,000,000.00 and to create at least 300 new jobs, a total credit of not more than $42,000,000.00 over 4 consecutive tax years unless otherwise provided under subsection (10). Unless the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available or that there are credits under subsection (7) (A) for additional credits under this subdivision, the Michigan economic growth authority shall not adopt a resolution authorizing an agreement under this subdivision after March 1, 2010.

(8) Any capital investments made, job created, or expenses incurred pursuant to an agreement entered for a credit under subsection (7) or (9) shall be in addition to any other capital investments, jobs, or expenses used for any other credit available under this section and shall not be included or used for a credit available under any subsection other that subsection (7) or (9), respectively. A taxpayer that claims a credit under subsection (7) (A) shall not claim an additional credit under subsection (7) (B). For purposes of subsection (7), "new job" means a full-time job created by a tax payer related to its advanced lithium ion battery activities, including its battery pack assembly facility, a cell manufacturing facility, and a motor vehicle assembly facility at which the battery pack is installed in a motor vehicle, or related battery engineering, that is in excess of the number of active full-time jobs the taxpayer maintained in the state prior to the effective date of the amendatory act that added this subsection as determined by the Michigan economic growth authority.

(9) Subject to the limitation of this subsection, if the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available, then for tax years that begin on or after January 1, 2015 and end before January 1, 2017 a tax payer may claim a credit of up to 75% of the cost incurred during each tax year that begins on or after January 1, 2013 and ends before January 1, 2016 to implement a sourcing program to utilize battery cells from a business that has entered into an agreement under subsection (5) for the construction of an integrative cell manufacturing facility. Costs eligible for the credit under this subsection shall include payments for battery pack and vehicle engineering and associated design or integration including prototyping, facility, equipment or component retooling, and vehicle regulatory certification and shall include costs such as direct labor, purchases of capital equipment at cost, expensed supplies, intellectual property licensing, services, and financing, as determined and certified by the Michigan economic growth authority. Any costs for which a credit is claimed under this subsection shall not be included in costs and expenses used for credits available under sections 403 and 405. The Michigan economic growth authority may enter into more than 1 agreement under this subsection. The Michigan economic growth authority shall not authorize more than an amount equal to 25% of the previously issued credits available under subsection (6) as determined under subsection (10) in total credits to all taxpayers under this subsection. A single taxpayer shall not claim a credit of more than $12,500,000.00 per year for no more than 2 years. To claim the credit under this subsection, a taxpayer must manufacture at least 10,000 motor vehicles in each year a credit is claimed at a facility in this

state at which some of the costs eligible for a credit under this subsection are or were incurred. An agreement entered into under this subsection shall contain a repayment provision that if the taxpayer relocates its batter pack assembly facility for which credits are taken under subsection (7) outside of this state during the term of the agreement or subsequently substantially fails to meet the requirements of the agreement, as determined the Michigan economic growth authority, the taxpayer shall have its credit reduced or terminated or have a percentage of the amount previously claimed under this subsection added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(10) If the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available, an amount equal to 25% of those previously issued credits may be used by the authority to enter into agreements for which a credit may be claimed under subsection (9) and an amount equal to 25% of those previously issued credits may be used by the authority to enter into additional agreements for which a credit may be claimed under subsection (7)(B). If the Michigan economic growth authority approves a total of less than $78,000,000.00 in credits under subsection (7)(A), the Michigan economic growth authority may use the difference between $78,000,000.00 and the total amount of credits approved under subsection (7)(A) to approve additional credits under subsection (7)(B). As used in this subsection and subsections (7) and (9), "previously issued credits" means the total amount of credits authorized by the authority for a taxpayer under subsection (6) that meets all of the following:

(a) The taxpayer did not use any or a portion of the credits authorized under the written agreement under subsection (6).

(b) The authority determined at a meeting upon a vote of the majority of the members present that the credits previously authorized satisfy subdivision (A).

(11) The Michigan economic growth authority shall appoint a review board to advise it about decisions concerning credits under subsection (5). The review board shall be composed of not fewer than 2 independent scientists. Additional experts may be sought on an ad hoc basis to review business plans and addressable markets. In making its recommendations, the review board shall give preference to technologies presenting novel materials, manufacturing, and performance qualities. The review board shall also consider all of the following:

(a) Business activities related to advanced battery technology occurring exclusively in Michigan.

(b) Activities directly related to whole cell production, from materials to large format cells, in Michigan.

(c) Scalability of manufacturing processes that are established, are robust, and address strategic global automotive market requirements.

(12) Credits under this section shall be taken after nonrefundable credits available under this act. If a credit or the sum of credits allowed under this section exceeds the tax liability of the

taxpayer for the tax year, the taxpayer may elect to have that portion that exceeds the tax liability of the taxpayer refunded or to have the excess carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. Amounts carried forward shall not affect the maximum amount of credits that may be claimed in subsequent years.

(13) An agreement entered into for tax credits under this section shall specify all of the following:

(a) For credits provided under subsection (2), the number of plug-in traction battery packs eligible for a credit for each tax year covered by the period of the agreement and the maximum amount of the credit that may be claimed by the taxpayer in each tax year.

(b) If the taxpayer claims a credit under subsection (3), the qualified expenses for vehicle engineering, prototype, and launch costs and the annual and total dollar amount of the credits that may be claimed under subsection (3).

(c) If the taxpayer claims a credit under subsection (4), the total dollar amount of the credits that may be claimed under subsection (4).

(d) If a taxpayer claims a credit under subsection (5), all of the following:

i. The location of the facility.

ii. The estimated total cost of the facility.

iii. The capital investment expenses that qualify for the credit under subsection (5).

iv. The annual and total dollar amount of the credits that may be claimed under subsection (5).

v. A repayment provision that if the taxpayer subsequently substantially fails to meet certain requirements of the agreement, as determined by the Michigan economic growth authority, the taxpayer may have its credit reduced or terminated or have apercentage of the amount previously claimed under subsection (5) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(e) If a taxpayer claims a credit under subsection (6), all of the following:

i. The location of the facility.

ii. The estimated total cost of the facility.

iii. The capital investment expenses that qualify for the credity under subsection (6).

iv. The annual and total dollar amount of the credits that may be claimed under subsection (6).

v. The minimum number of new jobs to be created in this state each year to qualify for the credit under subsection (6).

vi. A repayment provision that if the taxpayer subsequently substantially fails to meet certain requirements of the agreement, as determined by the Michigan economic growth authority, the taxpayer may have its credit reduced or terminated or have a percentage of the amount previously claimed under subsection (6) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(f) If a taxpayer claims a credit under subsection (7), all of the following:

i. A provision that the taxpayer agrees to make a good faith effort to utilize Michigan suppliers and vendors when purchasing components and services related to the production of advanced lithium ion battery packs for which a credit is claimed in the 2012, 2013, and 2014 tax years. For a credit during the 2015 and 2016 tax years, a provision that the taxpayer shall utilize cells from a business that has entered into an agreement under subsection (5) for the construction of an integrative cell manufacturing facility.

ii. A repayment provision that if the taxpayer relocated its advanced lithium ion battery pack assembly facility that produces the battery pack units for which the credit is claimed under subsection (7) outside of this state during the term of the agreement or subsequently fails to meet the capital investment of new job requirements of the agreement entered into for a credit under subsection (7), as determined by the Michigan economic growth authority, the taxpayer shall have a percentage of the amount previously claimed under subsection (7) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement entered into for a credit under subsection (7) and shall have its credit terminated or reduced prospectively.

iii. The minimum number of advanced lithium ion battery packs to be manufactured to be eligible for a credit for each tax year covered by the period of the agreement and the maximum amount of the credit that may be claimed by the taxpayer in each tax year.

iv. The capital investment that qualifies for the credit under subsection (7).

v. The minimum number of new jobs to be created in this state to qualify for the credit under subsection (7).

(14) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the

certificate to the annual return filed under this act on which a credit under this section is claimed. The certificate required under this subsection shall state all of the following:

(a) The taxpayer is located in this state and engaged in activity that qualifies for the credit under this section.

(b) The taxpayer's federal employer identification number or the Michigan department of treasury number assigned to the taxpayer and, for a taxpayer that is a unitary business group, the federal employer identification number or Michigan department of treasury number assigned to the member of the group engaged in this state in activity that qualifies for a credit under this section.

(c) If applicable, the number of plug-in traction battery pack units or advanced lithium ion battery pack units manufactured by the taxpayer during the designated tax year and the amount of the credit under this section for which the taxpayer is allowed to claim for the designated tax year.

(d) For credits available under subsections (3), (4), (5), (6), (7) and (9), the amount of the credit available for the tax year and such other information as may be required by the department.

(15) As used in this section:

(a) "Advanced automotive battery technology" means a rechargeable lithium battery that supports vehicle propulsion or other advanced technologies as may be further defined by the Michigan economic growth authority.

(b) "Advanced lithium ion battery pack" means an assembled unit of battery cells containing rechargeable lithium ion chemistry designed and mass-produced for the purpose of transportation, including defense and commercial applications.

(c) "Battery cell" means the basic electrochemical unit that provides a source of electrical energy by direct conversion of chemical energy and consists of an assembly of electrodes, separators, electrolyte, container, and terminals.

(d) "Capital investment" means expenses incurred during the tax year and included in an agreement under this section that are associated with facilities, equipment, tooling and engineering, and manufacturing, including salaries, contract services, taxes, utilities, raw materials, and supplies.

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

(f) "Plug-in traction battery pack" means an electrochemical energy storage device that meets the following requirements:

i. Has a traction battery capacity of not less than 4.0 kilowatt hours.

ii. Is equipped with an electrical plug by means of which it can be energized and recharged when plugged into an external source of power.

iii. Consists of standardized configuration and is mass-produced.

iv. Has been tested and approved by the national highway transportation safety administration as compliant with applicable motor vehicle and motor vehicle equipment safety standards when installed by a mechanic with standardized training in protocols established by the manufacturer as part of a nationwide distribution program.

v. Is installed in a new qualified plug-in electric drive motor vehicle that qualifies for the credit under section 30D of the internal revenue code.

(g) "Qualified advanced battery engineering expenses" means that part of a taxpayer's qualified research expenses as defined under section 41(b) of the internal revenue code related to engineering research and development related to advanced automotive battery technology.

(h) "Qualified expenses for vehicle engineering" means that part of a taxpayer's expenses for activities within this state related to integrating batteries into a motor vehicle that would qualify for the credit under section 30D of the internal revenue code including such qualified research expenses as defined under section 41(b) of the internal revenue code.

(i) "Traction battery capacity" is the number of kilowatt hours measured from a 100% state of charge to a 0% state of charge.

Section 435. MCL 208.1435 Historic Resource Credit. Rehabilitation of historic resource; tax credit.

(1) A qualified taxpayer with a rehabilitation plan certified after December 31, 2007 or a qualified taxpayer that has a rehabilitation plan certified before January 1, 2008 under section 39c of former 1975 PA 228 for the rehabilitation of an historic resource for which a certification of completed rehabilitation has been issued after the end of the taxpayer's last tax year may credit against the tax imposed by this act the amount determined pursuant to subsection (2) for the qualified expenditures for the rehabilitation of an historic resource pursuant to the rehabilitation plan in the year in which the certification of completed rehabilitation of the historic resource is issued. Only those expenditures that are paid or incurred during the time periods prescribed for the credit under section 47(a)(2) of the internal revenue code and any related treasury regulations shall be considered qualified expenditures.

(2) The credit allowed under this subsection shall be 25% of the qualified expenditures that are eligible, or would have been eligible except that the taxpayer entered into an agreement under subsection (13), for the credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the

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

(a) A taxpayer with qualified expenditures that are eligible for the credit under section 47(a)(2) of the internal revenue code may not claim a credit under this section for those qualified expenditures unless the taxpayer has claimed and received a credit for those qualified expenditures under section 47(a)(2) of the internal revenue code or the taxpayer has entered into an agreement under subsection (13).

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

(3) To be eligible for the credit under subsection (2), the taxpayer shall apply to and receive from the Michigan state housing development authority that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource meet the criteria under subsection (6) and either of the following:

(a) All of the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

v. The historic resource is subject to a historic preservation easement.

(7) For projects for which a certificate of completed rehabilitation is issued for a tax year beginning before January 1, 2009, if a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or any portion of a credit allowed under this section to its partners, members, or shareholders, based on the partner's, member's, or shareholder's proportionate share of ownership or based on an alternative method approved by the department. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which a certificate of completed rehabilitation is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. A partner, member, or shareholder that is an assignee shall not subsequently assign a credit or any portion of a credit assigned to the partner, member, or shareholder under this subsection. A credit amount assigned under this subsection may be claimed against the partner's, member's, or shareholder's tax liability under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. A credit assignment under this subsection shall be made on a form prescribed by the department. The qualified taxpayer and assignees shall attach a copy of the completed assignment form to the department in the tax year in which the assignment is made and attach a copy of the completed assignment form to the annual return required to be filed under this act for that tax year.

(8) For projects for which a certificate of completed rehabilitation is issued for a tax year beginning after December 31, 2008, a qualified taxpayer may assign all or any portion of the credit allowed under this section. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which a certificate of completed rehabilitation is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining amount. If the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which a certificate of completed rehabilitation is issued pursuant to this section. An assignee may subsequently assign the credit or any portion of the credit assigned under this subsection to 1 or more assignees. An assignment or subsequent reassignment of a credit can be made in the year the certificate of completed rehabilitation is issued. A credit assignment or subsequent reassignment under this section shall be made on a form prescribed by the department. The department or its designee shall review and issue a completed assignment or reassignment certificate to the assignee or reassignee. A credit amount assigned under this subsection may be claimed against the assignees' tax under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. An assignee or subsequent reassignee shall attach a copy of the completed assignment certificate to the annual return required to be filed under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, for the tax year in which the assignment or reassignment is made and the assignee or reassignee first claims the credit, which shall be the same tax year.

(9) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. If a qualified taxpayer has an unused carryforward of a credit under this section, the amount otherwise added under subsection (10), (11), or (12) to the qualified taxpayer's tax liability may instead be used to reduce the qualified taxpayer's carryforward under this section. An unused carryforward of a credit under section 39c of former 1975 PA 228 that

was unused at the end of the last tax year for which former 1975 PA 228 was in effect may be claimed against the tax imposed under this act for the years the carryforward would have been available under section 39c of former 1975 PA 228. For projects for which a certificate of completed rehabilitation is issued for a tax year beginning after December 31, 2008 and for which the credit amount allowed is less than $250,000.00, a qualified taxpayer may elect to forgo the carryover period and receive a refund of the amount of the credit that exceeds the qualified taxpayer's tax liability. The amount of the refund shall be equal to 90% of the amount of the credit that exceeds the qualified taxpayer's tax liability. An election under this subsection shall be made in the year that a certificate of completed rehabilitation is issued and shall be irrevocable.

(10) For tax years beginning before January 1, 2009, if the taxpayer sells an historic resource for which a credit was claimed under this section or under section 39c of former 1975 PA 228 less than 5 years after the year in which the credit was claimed, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the sale:

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

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

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

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

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

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

(11) For tax years beginning before January 1, 2009, if a certification of completed rehabilitation is revoked under subsection (5) less than 5 years after the year in which a credit was claimed under this section or under section 39c of former 1975 PA 228, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the revocation:

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

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

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

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

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

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

(12) Except as otherwise provided under subsection (13), for tax years beginning after December 31, 2008, if a certificate of completed rehabilitation is revoked under subsection (5), a preapproval letter is revoked under subsection (23)(b), or an historic resource is sold or disposed of less than 5 years after the historic resource is placed in service as defined in section 47(b)(1) of the internal revenue code and related treasury regulations or if a certificate of completed rehabilitation issued after December 1, 2008 is revoked under subsection (5) during a tax year beginning after December 31, 2008, a preapproval letter issued after December 1, 2008 is revoked under subsection (23)(b) during a tax year beginning after December 31, 2008, or an historic resource is sold or disposed of less than 5 years after the historic resource is placed in service during a tax year beginning after December 31, 2008, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the qualified taxpayer that received the certificate of completed rehabilitation and not the assignee in the year of the revocation:

(a) If the revocation is less than 1 year after the historic resource is placed in service, 100%.

(b) If the revocation is at least 1 year but less than 2 years after the historic resource is placed in service, 80%.

(c) If the revocation is at least 2 years but less than 3 years after the historic resource is placed in service, 60%.

(d) If the revocation is at least 3 years but less than 4 years after the historic resource is placed in service, 40%.

(e) If the revocation is at least 4 years but less than 5 years after the historic resource is placed in service, 20%.

(f) If the revocation is at least 5 years or more after the historic resource is placed in service, an addback to the qualified taxpayer tax liability shall not be required.

(13) Subsection (12) shall not apply if the qualified taxpayer enters into a written agreement with the authority that will allow for the transfer or sale of the historic resource and provides the following:

(a) Reasonable assurance that subsequent to the transfer the property will remain a historic resource during the 5-year period after the historic resource is placed in service.

(b) A method that the department can recover an amount from the taxpayer equal to the appropriate percentage of credit added back as described under subsection (12).

(c) An encumbrance on the title to the historic resource being sold or transferred, stating that the property must remain a historic resource throughout the 5-year period after the historic resource is placed in service.

(d) A provision for the payment by the taxpayer of all legal and professional fees associated with the drafting, review, and recording of the written agreement required under this subsection.

(14) The authority may impose a fee to cover the administrative cost of implementing the program under this section.

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

(a) Certification of completed rehabilitation.

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

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

(16) The authority may promulgate rules to implement this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(17) The total of the credits claimed under subsection (2) and section 266 of the income tax act of 1967, 1967 PA 281, MCL 206.266, for a rehabilitation project shall not exceed 25% of the total qualified expenditures eligible for the credit under subsection (2) for that rehabilitation project.

(18) The authority shall report all of the following to the legislature annually for the immediately preceding state fiscal year:

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

(b) A description of each rehabilitation project certified.

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

(19) In addition to the credit allowed under subsection (2) and subject to the criteria under this subsection and subsections (21), (22), and (23), for tax years that begin on and after January 1, 2009 a qualified taxpayer that has a preapproval letter issued on or before December 31, 2013 may claim an additional credit that has been approved under this subsection or subsection (20) against the tax imposed by this act equal to a percentage established in the taxpayer's preapproval letter of the qualified taxpayer's qualified expenditures for the rehabilitation of an historic resource or the actual amount of the qualified taxpayer's qualified expenditures incurred during the completion of the rehabilitation of an historic resource, whichever is less. The authority may approve 1 credit under this subsection for a qualified taxpayer that receives a certificate of completed rehabilitation for a credit under subsection (2) on or after January 1, 2009 and before November 15, 2009 notwithstanding that the qualified taxpayer has not received a preapproval letter for a credit under this subsection. The qualified taxpayer must apply for the additional credit under this subsection before January 1, 2010. If the additional credit approved under this subsection for a qualified taxpayer that has not received a preapproval letter on or before December 31, 2009 exceeds the allotted amount available for additional credits approved under this subsection in the calendar year ending December 31, 2009, then $2,800,000.00 of the allotted amount available in the calendar year ending December 31, 2010 may be allocated to that 1 credit. The total amount of all additional credits approved under this subsection shall not exceed $8,000,000.00 in calendar year ending December 31, 2009; $9,000,000.00 in calendar year ending December 31, 2010; $10,000,000.00 in calendar year ending December 31, 2011; $11,000,000.00 in calendar year ending December 31, 2012; and $12,000,000.00 in calendar year ending December 31, 2013 and, except as otherwise provided under this subsection, at least, 25% of the allotted amount for additional credits approved under this subsection during each calendar year shall be allocated to rehabilitation plans that have $1,000,000.00 or less in qualified expenditures. On October 1 of each calendar year, if the total of all credits approved under subdivision (a) for the calendar year is less than the minimum allotted amount, the authority may use the remainder of that allotted amount to approve applications for additional credits submitted under subdivision (b) for that calendar year. To be eligible for the additional credit under this subsection, the taxpayer shall apply to and receive a preapproval letter and comply with the following:

(a) For a rehabilitation plan that has $1,000,000.00 or less in qualified expenditures, the taxpayer shall apply to the authority for approval of the additional credit under this subsection. Subject to the limitation provided under this subsection, the authority is authorized to approve an application under this subdivision and determine the percentage of at least 10% but not more than 15% of the taxpayer's qualified expenditures for which he or she may claim an additional credit. If the authority approves the application under this subdivision, then the authority shall issue a preapproval letter to the taxpayer that states that the taxpayer is a qualified taxpayer and the maximum percentage of the qualified expenditures on which a

credit may be claimed for the rehabilitation plan when it is complete and a certification of completed rehabilitation is issued.

(b)) For a rehabilitation plan that has more than $1,000,000.00 in qualified expenditures, the taxpayer shall apply to the authority for approval of the additional credit under this subsection. The authority, subject to the approval of the president of the Michigan strategic fund or his or her designee, is authorized to approve an application under this subdivision and determine the percentage of up to 15% of the taxpayer's qualified expenditures for which he or she may claim an additional credit. An application shall be approved or denied not more than 15 business days after the authority has reviewed the application, determined the percentage amount of the credit for that applicant, and submitted the same to the president of the Michigan strategic fund or his or her designee. If the president of the Michigan strategic fund or his or her designee does not approve or deny the application within 15 business days after the application is received from the authority, the application is considered approved and the credit awarded in the amount as determined by the authority. If the president of the Michigan strategic fund or his or her designee approves the application under this subdivision, the director of the authority shall issue a preapproval letter to the taxpayer that states that the taxpayer is a qualified taxpayer and the maximum percentage of the qualified expenditures on which a credit may be claimed for the rehabilitation plan when it is complete and a certification of completed rehabilitation is issued.

(20) Except as otherwise provided under this subsection, the authority, subject to the approval of the president of the Michigan strategic fund and the state treasurer, may approve 3 additional credits during the 2009 calendar year of up to 15% of the qualified taxpayer's qualified expenditures, and 2 additional credits during the 2010, 2011, 2012, and 2013 calendar years of up to 15% of the qualified taxpayer's qualified expenditures, for certain rehabilitation plans that the authority determines is a high community impact rehabilitation plan that will have a significantly greater historic, social, and economic impact than those plans described under subsection (19)(a) and (b). The authority, subject to the approval of the president of the Michigan strategic fund and the state treasurer, may use 1 of the 2 additional credits available during the 2010 calendar year to approve an additional credit during the 2009 calendar year of up to 15% of the qualified taxpayer's qualified expenditures and 1 of the 2 additional credits available during the 2011 calendar year to approve an additional credit during the 2010 calendar year of up to 15% of the qualified taxpayer's qualified expenditures. To be eligible for the additional credit under this subsection, the taxpayer shall apply to and receive a preapproval letter from the authority. An application shall be approved or denied not more than 15 business days after the authority has reviewed the application, determined the percentage amount of the credit for that applicant, and submitted the same to the president of the Michigan strategic fund and the state treasurer. If the president of the Michigan strategic fund and the state treasurer do not approve or deny the application within 15 business days after the application is received from the authority, the application is considered approved and the credit awarded in the amount as determined by the authority. If the president of the Michigan strategic fund and the state treasurer approve the application under this subdivision, the authority shall issue a preapproval letter to the taxpayer that states that the taxpayer is a qualified taxpayer and the maximum percentage of the qualified

expenditures on which a credit may be claimed for the high community impact rehabilitation plan when it is complete and a certification of completed rehabilitation is issued. Before approving a credit under this subsection, the authority shall consider all of the following criteria to the extent reasonably applicable:

(a) The importance of the historic resource to the community in which it is located.

(b) If the rehabilitation of the historic resource will act as a catalyst for additional rehabilitation or revitalization of the community in which it is located.

(c) The potential that the rehabilitation of the historic resource will have for creating or preserving jobs and employment in the community in which it is located.

(d) Other social benefits the rehabilitation of the historic resource will bring to the community in which it is located.

(e) The amount of local community and financial support for the rehabilitation of the historic resource.

(f) The taxpayer's financial need of the additional credit.

(g) Whether the taxpayer is eligible for the credit allowed under section 47(a)(2) of the internal revenue code.

(h) Any other criteria that the authority, the president of the Michigan strategic fund, and the state treasurer consider appropriate for the determination of approval under this subsection.

(21) The maximum amount of credit that a taxpayer or an assignee may claim under subsection (20) during a tax year is $3,000,000.00. If the amount of the credit approved in the taxpayer's certificate of completed renovation is greater than $3,000,000.00 that portion that exceeds the cap shall be carried forward to offset tax liability in subsequent tax years until used up.

(22) Before approving a credit, determining the amount of such credit, and issuing a preapproval letter for such credit under subsection (19) or before considering an amendment to the preapproval letter, the authority shall consider the following criteria to the extent reasonably applicable:

(a) The importance of the historic resource to the community.

(b) The physical condition of the historic resource.

(c) The taxpayer's financial need of the additional credit.

(d) The overall economic impact the renovation will have on the community.

(e) Any other criteria that the authority and the president of the Michigan strategic fund, as applicable, consider appropriate for the determination of approval under subsection (19).

(23) The authority may at any time before a certification of completed rehabilitation is issued for a credit for which a preapproval letter was issued pursuant to subsection (19) do the following:

(a) Subject to the limitations and parameters under subsection (19), make amendments to the preapproval letter, which may include revising the amount of qualified expenditures for which the taxpayer may claim the additional credit under subsection (19).

(b) Revoke the preapproval letter if the authority determines that there has not been substantial progress toward completion of the rehabilitation plan or that the rehabilitation plan cannot be completed. The authority shall provide the qualified taxpayer with a notice of his or her intent to revoke the preapproval letter 45 days prior to the proposed date of revocation.

(24) If a preapproval letter is revoked under subsection (23)(b), the amount of the credit approved under that preapproval letter shall be added to the annual cap in the calendar year that the preapproval letter is revoked. After a certification of completed rehabilitation is issued for a rehabilitation plan approved under subsection (19), if the authority determines that the actual amount of the additional credit to be claimed by the taxpayer for the calendar year is less than the amount approved under the preapproval letter, the difference shall be added to the annual cap in the calendar year that the certification of completed rehabilitation is issued.

(25) Unless otherwise specifically provided under subsections (19) through (24), all other provisions under this section such as the recapture of credits, assignment of credits, and refundability of credits in excess of a qualified taxpayer's tax liability apply to the additional credits issued under subsections (19) and (20).

(26) In addition to meeting the criteria in subsection (20)(a) through (h), 3 of the credits available under subsection (20), including the credit used from the 2010 calendar year, and approved during the 2009 calendar year for a high community impact rehabilitation plan shall be for an application meeting 1 of the following criteria:

(a) All of the following:

i. The historic resource must be at least 70 years old.

ii. The historic resource must comprise at least 500,000 total square feet.

iii. The historic resource must be located in a county with a population of more than 1,500,000.

iv. The historic resource must be located in a city with an unemployment rate that is at least 2% higher than the current state average unemployment rate at the time of the application.

(b) All of the following:

i. The historic resource must be at least 85 years old.

ii. The historic resource must comprise at least 120,000 total square feet.

iii. The historic resource must be located in a county with a population of more than 400,000 and less than 500,000.

iv. The historic resource must be located in a city with a population of more than 100,000 and less than 125,000.

v. The historic resource must be located in a city with an unemployment rate that is at least 2% higher than the current state average unemployment rate at the time of the application.

(c) All of the following:

i. The historic resource must be at least 70 years old.

ii. The historic resource must comprise at least 180,000 total square feet but not more than 250,000 square feet and must exceed 30 stories in height.

iii. The historic resource must be located in a county with a population of more than 1,500,000.

iv. The historic resource must be located in a city with an unemployment rate that is at least 2% higher than the current state average unemployment rate at the time of the application.

v. The historic resource must be located in a historic district that contains a park bifurcated by an all-American road designated by the federal highway administration in a city with a population of more than 750,000.

vi. The historic resource must have been included in a rehabilitation plan for which an application was submitted by the application deadline for consideration of an additional credit for the 2009 calendar year for a high community impact rehabilitation plan.

(27) In addition to meeting the criteria in subsection (20)(a) through (h), 1 of the credits available under subsection (20), including the credit used from the 2011 calendar year, and approved during the 2010 calendar year for a high community impact rehabilitation plan shall be for an application that meets all of the following criteria:

(a) The historic resource must be at least 85 years old.

(b) The historic resource must comprise at least 85,000 total square feet.

(c) The historic resource must be located in a county with a population of more than 500,000 but less than 600,000 according to the official 2000 federal decennial census.

(d) The historic resource must be located in a city with a population of more than 180,000 but less than 200,000 according to the official 2000 federal decennial census.

(e) The historic resource is or was formerly owned by the United States government or formerly housed agencies of the United States government, or both.

(f) The historic resource houses facilities operated in conjunction with a public university.

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

(29) As used in this section:

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

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

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

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

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

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

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

v. Any other resource that could benefit from rehabilitation.

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

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

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

(g) "Michigan state housing development authority" or "authority" means the public body corporate and politic created by section 21 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1421.

(h) "Michigan strategic fund" means the Michigan strategic fund created under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

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

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

(k) "Preapproval letter" means a letter issued by the authority that indicates the date that the complete part 2 application was received and the amount of the credit allocated to the project based on the estimated rehabilitation cost included in the application.

(l) "Qualified expenditures" means capital expenditures that qualify, or would qualify except that the taxpayer entered into an agreement under subsection (13), for a rehabilitation credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to an historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code that were paid. Qualified expenditures do not include capital expenditures for nonhistoric additions to an historic resource except an addition that is required by state or federal regulations that relate to historic preservation, safety, or accessibility.

(m) "Qualified taxpayer" means a person that either owns the resource to be rehabilitated or has a long-term lease agreement with the owner of the historic

resource and that has qualified expenditures for the rehabilitation of the historic resource equal to or greater than 10% of the state equalized valuation of the property. If the historic resource to be rehabilitated is a portion of an historic or nonhistoric resource, the state equalized valuation of only that portion of the property shall be used for purposes of this subdivision. If the assessor for the local tax collecting unit in which the historic resource is located determines the state equalized valuation of that portion, that assessor's determination shall be used for purposes of this subdivision. If the assessor does not determine that state equalized valuation of that portion, qualified expenditures, for purposes of this subdivision, shall be equal to or greater than 5% of the appraised value as determined by a certified appraiser. If the historic resource to be rehabilitated does not have a state equalized valuation, qualified expenditures for purposes of this subdivision shall be equal to or greater than 5% of the appraised value of the resource as determined by a certified appraiser.

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

<u>Section 437. MCL 208.1437</u> Brownfield Credit. Qualified taxpayer with unused credits or preapproval letter; taxpayer not receiving certificate of completion; tax credit; project $2,000,000.00 or less; project more than $2,000,000.00 but $10,000,000.00 or less; project more than $10,000,000.00; procedures for application to Michigan economic growth authority; functionally obsolete property; approval of projects; limitations; multiphase project; documentation of completed project; addition of personal property; credit assignment; other credits; designation as urban development area project; professional sports stadiums; casinos; landfills; report; total credits; definitions.

(1) Subject to the criteria under this section, a qualified taxpayer that has unused credits or has a preapproval letter issued after December 31, 2007 and before January 1, 2014, or a taxpayer that received a preapproval letter prior to January 1, 2008 under section 38g of former 1975 PA 228 and has not received a certificate of completion prior to the taxpayer's last tax year, provided that the project is completed not more than 5 years after the preapproval letter for the project is issued unless extended under subsection (9) or if it is a multiphase project not more than 10years after the preapproval letter, as amended, if applicable, for the project is issued, or an assignee under subsection(20), (21), or (22) may claim a credit that has been approved under section 38g of former 1975 PA 228 or under subsection (2), (3), or (4) against the tax imposed by this act equal to either of the following:

(a) For projects approved before April 8, 2008, if the total of all credits for a project is $1,000,000.00 or less, 10% of the cost of the qualified taxpayer's eligible investment paid or accrued by the qualified taxpayer on an eligible property provided that the project does not exceed the amount stated in the preapproval

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

(b) For projects approved before April 8, 2008, if the total of all credits for a project is more than $1,000,000.00 but $30,000,000.00 or less and, except as provided in subsection (6)(b), the project is located in a qualified local governmental unit, a percentage as determined by the Michigan economic growth authority not to exceed 10% of the cost of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property. For projects approved, or amended, on and after April 8, 2008, and before January 1, 2010, if the total of all eligible investments for a project is more than $10,000,000.00 but $300,000,000.00 or less, up to 12.5% of the costs of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property that, except as provided in subsection (6)(b), is located in a qualified local governmental unit, up to 15%of the cost of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority, or, until December 31, 2010, up to 20% of the costs of the qualified taxpayer's eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority. For projects approved, or amended, on and after January 1, 2010, if the total of all eligible investments for a project is more than $10,000,000.00 but $100,000,000.00 or less, up to 12.5% of the costs of the qualified taxpayer’s eligible investment as determined under subsection (11) paid or accrued by the the qualified taxpayer on an eligible property that, except as provided in subsection (6) (B), is located in a qualified local governmental unit, up to 15% of the cost of the qualified taxpayer’s eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible property if the project is designated as an urban development area project by the Michigan economic growth authority, or, until December 31, 2010, up to 20% of the costs of the qualified taxpayer’s eligible investment as determined under subsection (11) paid or accrued by the qualified taxpayer on an eligible

property if the project is designated as an urban development area project by the Michigan economic growth authority. If eligible investment exceeds the amount of eligible investment in the preapproval letter, as amended, for that project, the total of all credits for the project shall not exceed the total of all credits on the certificate of completion.

(2) If the cost of a project will be $2,000,000.00 or less, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project under this subsection. An application under this subsection shall state whether the project is a multiphase project. Subject to the limitation provided under subsection (31), the chairperson of the Michigan economic growth authority or his or her designee is authorized to approve an application or project under this subsection. Only the chairperson of the Michigan economic growth authority is authorized to deny an application or project under this subsection. A project shall be approved or denied not more than 45 days after receipt of the application. If the chairperson of the Michigan economic growth authority or his or her designee does not approve or deny the application within 45 days after the application is received by the Michigan economic growth authority, the application is considered approved as written. If the chairperson of the Michigan economic growth authority or his or her designee approves a project under this subsection, the chairperson of the Michigan economic growth authority or his or her designee shall issue a preapproval letter that states that the taxpayer is a qualified taxpayer; the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when the project is completed and a certificate of completion is issued; and the project number assigned by the Michigan economic growth authority. If a project is denied under this subsection, a taxpayer is not prohibited from subsequently applying under this subsection for the same project or for another project. The Michigan economic growth authority shall develop and implement the use of the application form to be used for projects under this subsection.

(3) If the cost of a project will be for more than $2,000,000.00 but $10,000,000.00 or less, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project under this subsection. An application under this subsection shall state whether the project is a multiphase project. Subject to the limitation provided under subsection (31), the chairperson of the Michigan economic growth authority or his or her designee is authorized to approve an application or project under this subsection. Only the chairperson of the Michigan economic growth authority is authorized to deny an application or project under this subsection. A project shall be approved or denied not more than 45 days after receipt of the application. If the chairperson of the Michigan economic growth authority or his or her designee does not approve or deny an application within 45 days after the application is received by the Michigan economic growth authority, the application is considered approved as written. The criteria in subsection (7) shall be used when approving projects under this subsection. When approving projects under this subsection, priority shall be given to projects on a facility. The total of all credits for an approved project under this subsection shall not exceed the amounts authorized under subsection (1)(a). A taxpayer may apply under this subsection instead of subsection (4) for approval of a project that will be for more than $10,000,000.00, but the total of all credits for that project shall not exceed the amounts authorized under subsection (1)(a). If the chairperson of the Michigan economic growth authority or his or her designee approves a project under this subsection, the chairperson of

the Michigan economic growth authority or his or her designee shall issue a preapproval letter that states that the taxpayer is a qualified taxpayer; the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when the project is completed and a certificate of completion is issued; and the project number assigned by the Michigan economic growth authority. If a project is denied under this subsection, a taxpayer is not prohibited from subsequently applying under this subsection or subsection (4) for the same project or for another project.

(4) If the cost of a project will be for more than $10,000,000.00 and, except as provided in subsection (6)(b), the project is located in a qualified local governmental unit, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project. An application under this subsection shall state whether the project is a multiphase project. The Michigan economic growth authority shall approve or deny the project not more than 65 days after receipt of the application. A project under this subsection shall not be approved without the concurrence of the state treasurer. If the Michigan economic growth authority does not approve or deny the application within 65 days after it receives the application, the Michigan economic growth authority shall send the application to the state treasurer. The state treasurer shall approve or deny the application within 5 days after receipt of the application. If the state treasurer does not deny the application within 5 days after receipt of the application, the application is considered approved. The Michigan economic growth authority shall approve a limited number of projects under this subsection during each calendar year as provided in subsection (6). The Michigan economic growth authority shall use the criteria in subsection (7) when approving projects under this subsection, when determining the total amount of eligible investment, and when determining the percentage of eligible investment for the project to be used to calculate a credit. The total of all credits for an approved project under this subsection shall not exceed the amount designated in the preapproval letter, as amended, for that project. If the Michigan economic growth authority approves a project under this subsection, the Michigan economic growth authority shall issue a preapproval letter that states that the taxpayer is a qualified taxpayer; the percentage of eligible investment for the project determined by the Michigan economic growth authority for purposes of subsection (1)(b); the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when the project is completed and a certificate of completion is issued; and the project number assigned by the Michigan economic growth authority. The Michigan economic growth authority shall send a copy of the preapproval letter to the department. If a project is denied under this subsection, a taxpayer is not prohibited from subsequently applying under this subsection or subsection (3) for the same project or for another project.

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

(6) The Michigan economic growth authority may approve not more than 20 projects each calendar year through December 31, 2009, not more than 19 projects for the 2010 calendar year, and, except as otherwise provided under subdivision (D), not more than 17 projects for

each calendar year after December 31, 2010 under subsection (4), and the following limitations apply:

(a) Of the 20 projects allowed under this subsection, the total of all credits for each project may be more than $10,000,000.00 but $30,000,000.00 or less for only 1 project before December 31, 2009.

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

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

(d) If the Michigan economic growth authority determines that there are previously issued credits authorized under section 434(6) available, the Michigan economic growth authority may approve 2 additional projects for each calendar year after December 31, 2010. As used in this subdivision, "previously issued credits" means the total amount of credits authorized by the Michigan economic growth authority for a taxpayer under section 434(6) that meets all of the following:

i. The taxpayer did not use any or a portion of the credits authorized under the written agreement under section 434 (6).

ii. The authority determined at a meeting upon a vote of the majority of the members present that the credits previously authorized satisfy subparagraph (i).

(7) The Michigan economic growth authority shall review all applications for projects under subsection (4) and, if an application is approved, shall determine the maximum total of all credits for that project. Before approving a project for which the total of all credits will be more than $10,000,000.00 but $30,000,000.00 or less only, the Michigan economic growth authority shall determine that the project would not occur in this state without the tax credit offered under subsection (4). The Michigan economic growth authority shall consider the following criteria to the extent reasonably applicable to the type of project proposed when approving a project under subsection (4), and the chairperson of the Michigan economic growth authority or his or her designee shall consider the following criteria to the extent reasonably applicable to the type of project proposed when approving a project under subsection (2) or (3) or when considering an amendment to a project under subsection (9):

(a) The overall benefit to the public.

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

(c) Creation of jobs.

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

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

(f) The level of private sector contribution.

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

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

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

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

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

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

(10) A project may be a multiphase project. If a project is a multiphase project, when each component of the multiphase project is completed, the taxpayer shall submit documentation that the component is complete, an accounting of the cost of the component, and the eligible investment for the component of each taxpayer eligible for a credit for the project of which the component is a part to the Michigan economic growth authority or the designee of the Michigan economic growth authority, who shall verify that the component is complete. When the completion of the component is verified, a component completion certificate shall be issued to the qualified taxpayer which shall state that the taxpayer is a qualified taxpayer, the credit amount for the component, the qualified taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer, and the project number.

The taxpayer may assign all or part of the credit for a multiphase project as provided in this section after a component completion certificate for a component is issued. The qualified taxpayer may transfer ownership of or lease the completed component and assign a proportionate share of the credit for the entire project to the qualified taxpayer that is the new owner or lessee. A multiphase project shall not be divided into more than 10 components. A component is considered to be completed when a certificate of occupancy has been issued by the local municipality in which the project is located for all of the buildings or facilities that comprise the completed component and a component completion certificate is issued or the chairperson of the Michigan economic growth authority or his or her designee, for projects approved under subsection (2) or (3), or the Michigan economic growth authority, for projects approved under subsection (4), verifies that the component is complete. A credit assigned based on a multiphase project shall be claimed by the assignee in the tax year in which the assignment is made. The total of all credits for a multiphase project shall not exceed the amount stated in the preapproval letter, as amended, for the project under subsection (1). If all components of a multiphase project are not completed by 10 years after the date on which the preapproval letter, as amended, if applicable, for the project was issued, the qualified taxpayer that received the preapproval letter for the project shall pay to the state treasurer, as a penalty, an amount equal to the sum of all credits claimed and assigned for all components of the multiphase project and no credits based on that multiphase project shall be claimed after that date by the qualified taxpayer or any assignee of the qualified taxpayer. The penalty under this subsection is subject to interest on the amount of the credit claimed or assigned determined individually for each component at the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on the date that the credit for that component was claimed or assigned. As used in this subsection, "proportionate share" means the same percentage of the total of all credits for the project that the qualified investment for the completed component is of the total qualified investment stated in the preapproval letter, as amended, for the entire project.

(11) When a project under this section is completed, the taxpayer shall submit documentation that the project is completed, an accounting of the cost of the project, the eligible investment of each taxpayer if there is more than 1taxpayer eligible for a credit for the project, and, if the taxpayer is not the owner or lessee of the eligible property on which the eligible investment was made at the time the project is completed, that the taxpayer was the owner or lessee of, or was a party to an agreement to purchase or lease, that eligible property when all eligible investment of the taxpayer was made. The chairperson of the Michigan economic growth authority or his or her designee, for projects approved under subsection (2) or (3), or the Michigan economic growth authority, for projects approved under subsection (4), shall verify that the project is completed. The Michigan economic growth authority shall conduct an on-site inspection as part of the verification process for projects approved under subsection (4). When the completion of the project is verified, a certificate of completion shall be issued to each qualified taxpayer that has made eligible investment on that eligible property. The certificate of completion shall state the total amount of all credits for the project and that total shall not exceed the maximum total of all credits listed in the preapproval letter for the project under subsection (2), (3), or (4) as applicable and as amended under subsection (9) and shall state all of the following:

(a) That the taxpayer is a qualified taxpayer.

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

(c) Each qualified taxpayer's credit amount.

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

(e) The project number.

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

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

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

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

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

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

(16) Except as otherwise provided in this subsection or subsection (10), (18), (20), (21), or (22), a credit under this section shall be claimed in the tax year in which the certificate of completion is issued to the qualified taxpayer. For a project described in subsection (11)(f)

for which a schedule for claiming annual credit amounts is designated on the certificate of completion by the Michigan economic growth authority, the annual credit amount shall be claimed in the tax year specified on the certificate of completion.

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

(18) Except as otherwise provided under this subsection, if the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the qualified taxpayer's or assignee's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. 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 this 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 that disposed of that property, or transferred the personal property shall add the same percentage as determined under subsection (1) of the federal basis of the personal property used for determining gain or loss as of the date of the disposition or transfer to the qualified taxpayer's tax liability under this act after application of all credits under this act for the tax year in which the disposition or transfer occurs. If a qualified taxpayer has an unused carryforward of a credit under this section, the amount otherwise added under this subsection to the qualified taxpayer's tax liability may instead be used to reduce the qualified taxpayer's carryforward under subsection (18).

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

minimum term of 10 years or sold to another taxpayer for use in a business activity, the qualified taxpayer may assign all or a portion of the credit under this section based on that eligible investment to the lessee or purchaser of that eligible property. A credit assignment under this subsection shall only be made to a taxpayer that when the assignment is complete will be a qualified taxpayer. All credit assignments under this subsection are irrevocable and, except for a credit based on a multiphase project, shall be made in the tax year in which the certificate of completion is issued, unless the assignee is an unknown lessee. If a qualified taxpayer wishes to assign all or a portion of its credit to a lessee but the lessee is unknown in the tax year in which the certificate of completion is issued, the qualified taxpayer may delay claiming and assigning the credit until the first tax year in which the lessee is known. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. Except as otherwise provided in this subsection, if the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which the certificate of completion is issued or, for a credit assigned and claimed for a multiphase project before a certificate of completion is issued, the taxpayer shall claim the credit in the year in which the credit is assigned. If a qualified taxpayer assigns all or a portion of the credit and the eligible property is leased to more than 1 taxpayer, the qualified taxpayer shall determine the amount of credit assigned to each lessee. A lessee shall not subsequently assign a credit or any portion of a credit assigned under this subsection. A purchaser may subsequently assign a credit or any portion of a credit assigned to the purchaser under this subsection to a lessee of the eligible property. The credit assignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The qualified taxpayer shall send a copy of the completed assignment form to the Michigan economic growth authority in the tax year in which the assignment is made. The assignee shall attach a copy of the completed assignment form to its annual return required to be filed under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. In addition to all other procedures under this subsection, the following apply if the total of all credits for a project is more than $10,000,000.00 but $30,000,000.00 or less:

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

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

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

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

(21) Except as otherwise provided in this subsection, for projects for which a certificate of completion is issued before January 1, 2006, and except as otherwise provided in this subsection, if a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or a portion of a credit under this section to

its partners, members, or shareholders, based on their proportionate share of ownership of the partnership, limited liability company, or subchapter S corporation or based on an alternative method approved by the Michigan economic growth authority. A credit assignment under this subsection is irrevocable and, except for a credit assignment based on a multiphase project, shall be made in the tax year in which a certificate of completion is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. Except as otherwise provided in this subsection, if the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which a certificate of completion is issued or for a credit assigned and claimed for a multiphase project, before the component completion certificate is issued, the taxpayer shall claim the credit in the year in which the credit is assigned. A partner, member, or shareholder that is an assignee shall not subsequently assign a credit or any portion of a credit assigned under this subsection. The credit assignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The qualified taxpayer shall send a copy of the completed assignment form to the Michigan economic growth authority in the tax year in which the assignment is made. A partner, member, or shareholder who is an assignee shall attach a copy of the completed assignment form to its annual return required under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. A credit assignment based on a credit for a component of a multiphase project that is completed before January 1, 2006 shall be made under this subsection. In addition to all other procedures under this subsection, the following apply if the total of all credits for a project is more than $10,000,000.00 but $30,000,000.00 or less:

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

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

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

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

(22) For projects approved under this section or section 38g of former 1975 PA 228 for which a certificate of completion is issued on and after January 1, 2006, a qualified taxpayer may assign all or a portion of a credit allowed under this section or section 38g(2), (3), or (33) of former 1975 PA 228 under this subsection. A credit assignment under this subsection is irrevocable and, except for a credit assignment based on a multiphase project, shall be made in the tax year in which a certificate of completion is issued unless the assignee is an unknown lessee. If a qualified taxpayer wishes to assign all or a portion of its credit to a lessee but the lessee is unknown in the tax year in which the certificate of completion is issued, the qualified taxpayer may delay claiming and assigning the credit until the first tax year in which the lessee is known. A qualified taxpayer may claim a portion of a credit and

assign the remaining credit amount. If the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which a certificate of completion is issued pursuant to this section or section 38g of former 1975 PA 228. An assignee may subsequently assign a credit or any portion of a credit assigned under this subsection to 1 or more assignees. The credit assignment or a subsequent reassignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The Michigan economic growth authority or its designee shall review and issue a completed assignment or reassignment certificate to the assignee or reassignee. An assignee or subsequent reassignee shall attach a copy of the completed assignment certificate to its annual return required under this act, for the tax year in which the assignment or reassignment is made and the assignee or reassignee first claims a credit, which shall be the same tax year. A credit assignment based on a credit for a component of a multiphase project that is completed before January 1, 2006 shall be made under section 38g(18) of former 1975 PA 228. A credit assignment based on a credit for a component of a multiphase project that is completed on or after January 1, 2006 may be made under this section. In addition to all other procedures and requirements under this section, the following apply if the total of all credits for a project is more than $10,000,000.00 but $30,000,000.00 or less:

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

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

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

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

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

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

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

(c) If the project promotes sustainable redevelopment.

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

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

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

(25) An eligible taxpayer that claims a credit under this section is not prohibited from claiming a credit under section431. However, the eligible taxpayer shall not claim a credit under this section and section 431 based on the same costs.

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

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

(28) Eligible investment attributable or related to the construction of a new landfill or the expansion of an existing landfill regulated under part 115 of the natural resources and environmental protection act, 1994 PA 451, MCL324.11501 to 324.11550, shall not be used as a basis for a credit under this section.

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

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

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

(30) For purposes of this section, taxpayer includes a person subject to the tax imposed under chapters 2A and 2B.

(31) For the 2008 calendar year, the total of all credits for all projects approved under subsection (2) or (3) shall not exceed $63,000,000.00. For each calendar year after 2008, the total of all credits for all projects approved under subsection (2) or (3) shall not exceed $40,000,000.00. If the Michigan economic growth authority approves a total of all credits for all projects under subsection (2) or (3) of less than $40,000,000.00 in a calendar year, the Michigan economic growth authority may carry forward for 1 year only the difference

between $40,000,000.00 and the total of all credits for all projects under this subsection approved in the immediately preceding calendar year.

(32) As used in this section:

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

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

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

(d) "Eligible investment" or "eligible investments" means, when made after the approval date of the brownfield plan but in any event no earlier than 90 days prior to the date of the preapproval letter, any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property and the addition of machinery, equipment, and fixtures to eligible property after the date that eligible activities on that eligible property have started pursuant to a brownfield plan under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, if the costs of the eligible investment are not otherwise reimbursed to the taxpayer or paid for on behalf of the taxpayer from any source other than the taxpayer. The addition of leased machinery, equipment, or fixtures to eligible property by a lessee of the machinery, equipment, or fixtures is eligible investment if the lease of the machinery, equipment, or fixtures has a minimum term of 10 years or is for the expected useful life of the machinery, equipment, or fixtures, and if the owner of the machinery, equipment, or fixtures is not the qualified taxpayer with regard to that machinery, equipment, or fixtures. For projects approved after April 8, 2008, eligible investment does not include certain soft costs of the eligible investment as determined by the Michigan economic growth authority, including, but not limited to, developer fees, appraisals, performance bonds, closing costs, bank fees, loan fees, risk contingencies, financing costs, permanent or construction period interest, legal expenses, leasing or sales commissions, marketing costs, professional fees, shared savings, taxes, title insurance, bank inspection fees, insurance, and project management fees. Notwithstanding the foregoing, eligible investment does include architectural, engineering, surveying, and similar professional fees.

(e) "Eligible property", except as otherwise provided under subsection (33), means property for which eligible activities are identified under a brownfield plan that

was used or is currently used for commercial, industrial, public, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and that is 1 or more of the following:

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

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

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

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

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

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

(i) "Personal property" means that term as defined in section 8 of the general property tax act, 1893 PA 206, MCL211.8, except that personal property does not include either of the following:

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

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

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

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

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

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

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

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

ii. Certifies that, except as otherwise provided in this subparagraph, the department of natural resources and environment has not sued or issued a unilateral order to the taxpayer pursuant to part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, to compel response activity on or to the eligible property, or expended any state funds for response activity on or to the eligible property and demanded reimbursement for those expenditures from the qualified taxpayer. However, if the taxpayer has completed all response activity required by part201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, is in compliance with any deed restriction or administrative or judicial order related to the required response activity, and has reimbursed the state for all costs incurred by the state related to the required response activity, the taxpayer meets the criteria under this subparagraph.

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

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

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

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

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

A. Infrastructure improvements that directly benefit the eligible property.

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

C. Lead or asbestos abatement.

D. Site preparation that is not response activity under section 20101 of the natural resources and environmental protection 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.

Section 439. MCL 208.1439 Qualified Low-Grade Hematite Credit. Hematite consumed in industrial or manufacturing process; tax credit; definitions.

(1) A taxpayer may claim a credit against the tax imposed by this act equal to $1.00 per long ton of qualified low-grade hematite consumed in an industrial or manufacturing process that is the business activity of the taxpayer.

(2) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 5 tax years or until the excess credit is used up, whichever occurs first.

(3) The credit under this section shall be based on low-grade hematite consumed on and after January 1, 2000.

(4) As used in this section:

(a) "Consumed in an industrial or manufacturing process" means a process in which low-grade hematite is used as a raw material in the production of pig iron or steel.

(b) "Low-grade hematite" means any hematitic iron formation that is not of sufficient quality in its original mineral state to be mined and shipped for the production of pig iron or steel without first being drilled, blasted, crushed, and ground very fine to liberate the iron minerals and for which additional beneficiation and agglomeration are required to produce a product of sufficient quality to be used in the production of pig iron or steel.

(c) "Qualified low-grade hematite" means pellets produced from low-grade hematitic iron ore mined in the United States.

Section 441. MCL 208.1441 Michigan Entrepreneurial Credit. Conditions; definitions.

(1) For the 2008, 2009, and 2010 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 years 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 annually adjusted for inflation using the Detroit consumer price index.

(b) Has created in this state or transferred into this state not fewer than 20 new jobs in the immediately preceding tax year.

(c) Has made a capital investment in this state of not less than $1,250,000.00 in the immediately preceding tax year. For purposes of determining eligibility under this subdivision, the capital investment shall not include the purchase of an existing plant or the purchase of existing equipment.

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

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

may claim the Michigan entrepreneurial credit equal to 100% of the taxpayer's tax liability imposed by this act attributable to the increased employment under subdivision (b) for 3 years 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.

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

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

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

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

(6) As used in this section:

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

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

i. Did not exist in this state in the immediately preceding tax year.

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

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

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

Section 445. MCL 208.1445 New Motor Vehicle Dealer Credit. Taxpayer as new motor vehicle dealer; tax credit; "new motor vehicle inventory" defined.

(1) A taxpayer that is a new motor vehicle dealer licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, may claim a credit against the tax imposed by this act equal to 0.25% of the amount paid by the taxpayer to acquire new motor vehicle inventory in the tax year.

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

(3) As used in this section, "new motor vehicle inventory" means new motor vehicles or motor vehicle parts.

Section 446. MCL 208.1446 Public Exhibition Credit. Ownership, operation, or control of exhibition open to public; tax credit.

(1) Beginning in 2009, a qualified taxpayer may claim a credit against the tax imposed by this act equal to the following:

(a) In 2009, the qualified taxpayer's tax liability under this act or $500,000.00, whichever is less.

(b) In 2010 and each year thereafter, the qualified taxpayer's tax liability under this act or $250,000.00, whichever is less.

(2) As used in this section, "qualified taxpayer" means a taxpayer that owns, operates, or controls an exhibition in this state that is open to the public and satisfies all of the following:

(a) Promotes, advertises, or displays the design or concept of products that are designed, manufactured, or produced, in whole or in part, in this state and are available for sale to the general public.

(b) The exhibition uses more than 100,000 square feet of floor space.

(c) Is open to the general public for at least 7 consecutive days in a calendar year.

(d) Attendance during the entire exhibition exceeds 500,000.

(e) Has more than 3,000 credentialed journalists, including international journalists, who attend the exhibition.

Section 447. MCL 208.1447 Meijer Grocery Store Credit. Tax credit equal to 0.535% of taxpayer's compensation.

(1) An eligible taxpayer may claim a credit against the tax imposed by this act equal to 1.0% of the taxpayer's compensation in this state, not to exceed $8,500,000.00.

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

(3) A taxpayer that claims a credit under this section shall not claim a credit under section 449.

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

(a) Operates at least 17,000,000 square feet of enclosed retail space and 2,000,000 square feet of enclosed warehouse space in this state.

(b) Sells all of the following at retail:

i. Fresh, frozen, or processed food, food products, or consumable necessities.

ii. Prescriptions and over-the-counter medications.

iii. Health and beauty care products.

iv. Cosmetics.

v. Pet products.

vi. Carbonated beverages.

vii. Beer, wine, or liquor.

(c) Sales of the items listed in subdivision (b) represent more than 35% of the taxpayer's total sales in the tax year.

(d) Maintains its headquarters operation in this state.

Section 449. MCL 208.1449 Spartan Stores Grocery Store Credit. Tax credit equal to 0.125% of taxpayer's compensation.

(1) An eligible taxpayer may claim a credit against the tax imposed by this act equal to 0.125% of the taxpayer's compensation in this state, not to exceed $300,000.00.

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

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

(a) Operates at least 2,500,000 square feet of enclosed retail space and 1,400,000 square feet of enclosed warehouse, headquarters, and transportation services in this state.

(b) Sells all of the following at retail:

i. Fresh, frozen, or processed food, food products, or consumable necessities.

ii. Prescriptions and over-the-counter medications.

iii. Health and beauty care products.

iv. Cosmetics.

v. Pet products.

vi. Carbonated beverages.

vii. Beer, wine, or liquor.

(c) Sales of the items listed in subdivision (b) represent more than 35% of the taxpayer's total sales in the tax year.

(d) The taxpayer maintains its headquarters operation in this state.

Section 450. MCL 208.1450 Hybrid Technology Credit. Research and development of qualified technology; tax credit; definitions.

(1) Subject to section 450a, for tax years that begin on or after January 1, 2008 and end before January 1, 2016, a taxpayer that is engaged in research and development of a qualified technology may claim a credit against the tax imposed by this act equal to 3.9% of the compensation as defined in section 107 for services performed in a qualified facility, paid to the employees at the qualified facility in the tax year, if the taxpayer has entered into an agreement before April 1, 2007 with the Michigan economic growth authority that provides all of the following:

(a) The type and number of jobs at the qualified facility to which the agreement applies.

(b) The type of work to be performed by the employees performing the jobs provided under subdivision (a) by the taxpayer.

(c) Any other terms and conditions that the Michigan economic growth authority considers to be in the public interest.

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

(3) The maximum amount of the credit allowed under this section that any 1 taxpayer may claim shall not exceed $2,000,000.00 in a single tax year.

(4) As used in this section:

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

(b) "Motor vehicle" means a motor vehicle as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33, that is designed as a passenger vehicle, or sport utility vehicle, but does not include a motor home, bus, truck other than a pickup truck or van, or a vehicle designed to travel on less than 4 wheels.

(c) "Qualified city" means a city that meets both of the following criteria:

i. Has a population of not less than 80,000 and not more than 82,000 as designated by the United States bureau of the census in the 2000 census.

ii. Is located in a county that has a population of not less than 1,000,000 and not more than 1,300,000 as designated by the United States bureau of the census in the 2000 census.

(d) "Qualified facility" means a leased facility in a qualified city used for the research and development of a qualified technology.

(e) "Qualified technology" means a hybrid system the primary purpose of which is the propulsion of a motor vehicle.

(f) "Research and development" means "qualified research" as that term is defined in section 41(d) of the internal revenue code.

Section 450a. MCL 208.1450a Hybrid technology Credit. Tax credit under section 34 of former 1975 PA 228; tax credit under MCL 208.1450; tax credit under MCL 208.1405.

(1) A taxpayer that qualified to claim the credit under section 34 of former 1975 PA 228 may claim the credit under section 450 for the total number of years designated in the agreement, reduced by the number of years the taxpayer claimed the credit under section 34 of former 1975 PA 228, or until January 1, 2016, whichever occurs first.

(2) A taxpayer that claims a credit under section 450 is not prohibited from claiming a credit under section 405. However, the taxpayer shall not claim a credit under section 450 and section 405 based on the same research and development.

Section 451. MCL 208.1451 Beverage Container Deposit Law Credit. Tax credit against tax, percentages, not refundable.

(1) An eligible taxpayer may claim a credit against the tax imposed by this act equal to the following:

(a) If a surcharge is imposed and levied under section 281 for the same tax year for which the credit is claimed under this section, 30.5% of the taxpayer's expenses incurred during the tax year to comply with 1976 IL 1, MCL 445.571 to445.576.

(b) If a surcharge is not imposed and levied under section 281 for the same tax year for which the credit is claimed under this section, 25% of the taxpayer's expenses incurred during the tax year to comply with 1976 IL 1, MCL 445.571 to 445.576.

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

(3) As used in this section:

(a) "Beverage container" and "distributor" mean those terms as defined under 1976 IL 1, MCL 445.571 to 445.576.

(b) "Eligible taxpayer" means a distributor or manufacturer who originates a deposit on a beverage container in accordance with 1976 IL 1, MCL 445.571 to 445.576.

Section 453. MCL 208.1453 Private Equity Fund Credit. Private equity fund manager; tax credit; definitions.

(1) An eligible taxpayer may claim a credit against the tax imposed by this act equal to the eligible taxpayer's tax liability attributable to the activities as an eligible taxpayer for the tax year after claiming any other credits allowed under this act multiplied by a fraction, the numerator of which is the total activity of the private equity fund manager conducted in this state during the tax year and the denominator of which is the total activity of the private equity fund manager conducted everywhere during the tax year.

(2) For purposes of this section, the location of the activity of the private equity fund manager is based on the location of the office from which the fund manager conducts management activity for the eligible taxpayer.

(3) As used in this section:

(a) "Accredited investor" means that term as defined under section 2 of the securities act of 1933, 15 USC 77b.

(b) "Eligible taxpayer" means a taxpayer that is a private equity fund which serves as a conduit for the investment of private securities not listed on a public exchange

by accredited investors or qualified purchasers at any time during which the investment is acquired or subsequently used to claim the credit under this section.

(c) "Private equity fund manager" means the person or persons responsible for the management of the investments of the eligible taxpayer.

(d) "Qualified purchaser" means that term as defined under section 2 of the investment company act of 1940, 15USC80a-2.

Section 455. MCL 208.1455. Film Production Credit. Michigan film office; agreement with eligible production company; tax credit; requirements; application; form; fee; considerations; determination of compliance with terms of agreement; issuance of postproduction certificate; confidentiality of information, records, or other data; assignment of credit; submission of fraudulent or false information; annual report; definitions.

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

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

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

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

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

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

(2) For direct production expenditures or qualified personnel expenditures made after February 29, 2008, an agreement under this section may provide for an eligible production company to claim a tax credit equal to 42% of direct production expenditures for a state certified qualified production in a core community, 40% of direct production expenditures for a state certified qualified production in part of this state other than a core community, and 30% for qualified personnel expenditures. A taxpayer shall not claim a credit under this section for any of the following:

(a) A direct expenditure, or qualified personnel expenditure, for which the company claims a credit under section459.

(b) A direct expenditure, or qualified personnel expenditure, for which the company claims a credit under section367 of the income tax act of 1967, 1967 PA 281, MCL 206.367.

(c) A direct expenditure, or qualified personnel expenditure, for which another taxpayer claims a credit under this section, a credit under section 459, or a credit under section 367 of the income tax act of 1967, 1967 PA 281, MCL206.367.

(3) An eligible production company intending to produce a qualified production in this state, or that initiated production of a qualified production after February 29, 2008 and before the effective date of the amendatory act that added this section, may submit an application to enter into an agreement under this section to the Michigan film office. Except for a qualified production for which production was initiated after February 29, 2008 and before the effective date of the amendatory act that added this section, direct production expenditures and qualified personnel expenditures incurred prior to approval of an agreement under this section are not eligible for the credit under this section. The request shall be submitted in a form prescribed by the Michigan film office and shall be accompanied by a $100.00 application fee and all of the information and records requested by the office. An application fee received by the office under this subsection shall be deposited in the Michigan film promotion fund. The office shall not process the application until it is complete. As part of the application, the company shall estimate direct production expenditures and qualified personnel expenditures for an identified qualified production. If the office, with the concurrence of the state treasurer, determines to enter into an agreement under this section, the agreement shall provide for all of the following:

(a) A requirement that the eligible production company commence work in this state on the identified qualified production within 90 days of the date of the agreement or else the agreement shall expire. However, upon request submitted by the company based on good cause, the office may extend the period for commencement of work in this state for up to an additional 90 days.

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

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

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

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

(f) A requirement that the company provide the office with the information and independent certification the office and the department deem necessary to verify

direct production expenditures, qualified personnel expenditures, and eligibility for the credit under this section.

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

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

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

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

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

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

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

(5) If the Michigan film office determines that an eligible production company has complied with the terms of an agreement entered into under this section, the office shall issue a postproduction certificate to the company. The company shall submit a request to the office for a postproduction certificate on a form prescribed by the office, along with any information or independent certification the office or the department deems necessary. The office shall process each request within 60 days after the request is complete. However, the office may request additional information or independent certification before issuing a postproduction certificate of completion and need not issue the postproduction certificate until satisfied that direct production expenditures, qualified personnel expenditures, and eligibility are adequately established. The additional information requested may include a report of direct production expenditures and qualified personnel expenditures for the qualified production audited and certified by an independent certified public accountant. Each postproduction certificate of completion shall be signed by the Michigan film commissioner and shall include the following information:

(a) The name of the eligible production company.

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

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

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

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

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

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

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

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

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

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

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

(11) Not later than March 1 of each year after 2008, the Michigan film office shall submit to the governor, the president of the Michigan strategic fund, the chairperson of the senate finance committee, and the house tax policy committee an annual report concerning the

operation and effectiveness of the credit under this section. The requirements of section28(1)(f) of 1941 PA122, MCL 205.28, do not apply to disclosure of tax information required by this subsection. The report shall include all of the following:

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

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

(c) The amount of money spent by each eligible production company identified in subdivision (b) to produce each qualified production in this state and a breakdown of all production spending by all companies classified as goods, services, or salaries and wages in the immediately preceding calendar year.

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

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

(12) As used in this section:

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

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

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

i. Payments to vendors doing business in this state to purchase or use tangible personal property in producing or distributing the qualified production or to purchase services relating to the production or distribution of the qualified production, including all of the following:

A. Expenditures for optioning or purchasing intellectual property including, but not limited to, books, scripts, music, or trademarks

relating to the development or purchase of a script, story, scenario, screenplay, or format, including all expenditures generally associated with the optioning or purchase of intellectual property, including option money, agent fees, and attorney fees relating to the transaction, but not including deferrals, deferments, royalties, profit participation, or recourse or nonrecourse loans negotiated by the eligible production company to obtain the rights to the intellectual property.

B. Production work, production equipment, production software, development work, postproduction work, postproduction equipment, postproduction software, set design, set construction, set operations, props, lighting, wardrobe, makeup, makeup accessories, photography, sound synchronization, special effects, visual effects, audio effects, film processing, music, sound mixing, editing, and related services and materials.

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

D. Catering, food, lodging, and related services and materials.

E. Use of vehicles, which may include chartered aircraft based in this state used for transportation in this state directly attributable to production of a qualified production, but may not include the chartering of aircraft for transportation outside of this state.

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

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

H. Expenditures for distribution, including, but not limited to, both of the following:

    a. Preproduction, production, or postproduction costs relating to the creation of trailers, marketing videos, commercials, point-of-purchase videos, and content created on film or digital media, including, but not limited to, the duplication of films, videos, compact discs, digital video discs, and digital files or other digital media created for consumer consumption.

b. Purchase of equipment relating to the duplication or market distribution of any content created or produced in this state.

I. Other expenditures for production of a qualified production in accordance with generally accepted entertainment industry practices.

ii. Payments and compensation, not to exceed $2,000,000.00 for any 1 employee or contractual or salaried employee who performs services in this state for the production or distribution of a qualified production, including all of the following:

A. Payment of wages, benefits, or fees for talent, management, or labor.

B. Payment to a personal services corporation or professional employer organization for the services of a performing artist or crew member if the personal services corporation or professional employer organization is subject to the tax levied under this act on the portion of the payment qualifying for the tax credit under this section and the payments received by the performing artist or crew member that are subject to taxation under the income tax act of1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and paid to this state in the amount provided under section351 of the income tax act of 1967, 1967 PA 281, MCL 206.351.

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

(e) "Interactive website" means a website, the production costs of which exceed $500,000.00 in an annual period and primarily includes interactive games, end user applications, animation, simulation, sound, graphics, story lines, or video created or repurposed for distribution over the internet. Interactive website does not include a website primarily used for institutional, private, industrial, retail, or wholesale marketing or promotional purposes, or which contains obscene matter or an obscene performance.

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

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

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

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

(j) "Qualified personnel expenditure" means an expenditure made in this state directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in this state and is a payment or compensation payable to below the line crew for below the line crew members who were not residents of this state for at least 60 days before approval of the agreement for the qualified production under subsection (3), not to exceed $2,000,000.00 for any 1 employee or contractual or salaried employee who performs service in this state for the production of a qualified production, including both of the following:

i. Payment of wages, benefits, or fees.

ii. Payment to a personal services corporation or professional employer organization for the services of a performing artist or crew member if the personal services corporation or professional employer organization is subject to the tax levied under this act on the portion of the payment qualifying for the tax credit under this section and the payments received by the performing artist or crew member that are subject to taxation under the income tax act of1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and paid to this state in the amount provided under section351 of the income tax act of 1967, 1967 PA 281, MCL 206.351.

(k) "State certified qualified production" or "qualified production" means single media or multimedia entertainment content created in whole or in part in this state for distribution or exhibition to the general public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website. Qualified production also includes any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a production. Qualified production does not include any of the following:

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

ii. A production that includes obscene matter or an obscene performance.

iii. A production that primarily consists of televised news or current events.

iv. A production that primarily consists of a live sporting event.

v. A production that primarily consists of political advertising.

vi. A radio program.

vii. A weather show.

viii. A financial market report.

ix. A talk show.

x. A game show.

xi. A production that primarily markets a product or service other than a state certified qualified production.

xii. An awards show or other gala event production.

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

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

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

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

Section 457. MCL 208.1457. Film Production Infrastructure Credit. Qualified film and digital media infrastructure project; tax credit.

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

(a) Before January 1, 2009, invest and expend at least $100,000.00 for a qualified film and digital media infrastructure project in this state; after December 31,

2008, invest and expend at least $250,000.00 for a qualified film and digital media infrastructure project in this state.

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

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

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

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

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

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

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

(3) A taxpayer seeking a credit under this section may submit an application to enter into an agreement under this section to the Michigan film office. The application shall be submitted in a form prescribed by the Michigan film office and shall be accompanied by a $100.00 application fee and all of the information and records requested by the office. An application fee received by the office under this subsection shall be deposited in the Michigan film promotion fund. The office shall not process the application until it is complete. If the office, with the concurrence of the state treasurer, determines to enter into an agreement under this section, the agreement shall provide for all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The name of the taxpayer.

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

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

(d) The unique number assigned to the qualified film and digital media infrastructure project by the office under subsection (3).

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

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

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

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

(8) The credit under this section shall be claimed after all other credits under this act. A taxpayer eligible to claim a credit under this section may assign all or a portion of a credit under this

section to any assignee. An assignee may subsequently assign a credit or any portion of a credit assigned under this subsection to 1 or more assignees. A taxpayer may claim a portion of a credit and assign the remaining credit amount. A credit assignment under this subsection is irrevocable. The credit assignment under this subsection shall be made on a form prescribed by the department. A taxpayer claiming a credit under this section shall send a copy of the completed assignment form to the department in the tax year in which the assignment is made and shall attach a copy of the form to the return on which the credit is claimed.

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

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

(11) As used in this section:

(a) "Base investment" means the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets expended by a person in the development of a qualified film and digital media infrastructure project. Base investment does not include a direct production expenditure or qualified personnel expenditure eligible for a credit under section 455.

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

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

(d) "Qualified film and digital media infrastructure project" means a film, video, television, or digital media production and postproduction facility located in this state, movable and immovable property and equipment related to the facility, and any other facility that is a necessary component of the primary facility. A qualified film and digital media infrastructure project does not include a movie theater or other commercial exhibition facility, a facility used to produce obscene matter or an obscene performance as described in 1984 PA 343, MCL 752.361 to

752.374, or a facility used for a production for which records are required to be maintained with respect to any performer in the production under 18 USC 2257.

Section 459. MCL 208.1459. Film Production Job Training Credit. Eligible production company; tax credit.

(1) Until September 30, 2015, the Michigan film office, with the concurrence of the state treasurer, may enter into an agreement with an eligible production company providing the company with a credit against the tax imposed by this act for qualified job training expenditures, as provided under this section. To qualify for the credit under this section, a company shall meet all of the following requirements:

(a) Make qualified job training expenditures for a state certified qualified production.

(b) After completion of the production of the state certified qualified production in this state, submit to the office an application in a form determined by the office with information regarding the qualified job training expenditures, including employment, salary, and related information required by the office.

(c) Receive a qualified job training expenditures certificate from the office under subsection (5).

(d) Submit the qualified job training expenditure certificate issued by the office under subsection (5) to the department under subsection (7).

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

(2) For a qualified job training expenditure made by a company, the company may claim a tax credit equal to 50% of the qualified job training expenditure. A company shall not claim a credit under this section for any of the following:

(a) A direct expenditure, or qualified personnel expenditure, for which the company claims a credit under section 455.

(b) A direct expenditure, or qualified personnel expenditure, for which the company claims a credit under section367 of the income tax act of 1967, 1967 PA 281, MCL 206.367.

(c) A direct expenditure, or qualified personnel expenditure, for which another taxpayer claims a credit under this section, a credit under section 455, or a credit under section 367 of the income tax act of 1967, 1967 PA 281, MCL206.367.

(3) A taxpayer seeking a credit under this section may submit an application to enter into an agreement under this section to the Michigan film office. The application shall be submitted, prior to making qualified job training expenditures, in a form prescribed by the Michigan

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

(a) A unique number assigned to the state certified qualified production for which qualified job training expenditures were incurred by the company.

(b) A detailed description of the state certified qualified production and the qualified job training expenditures.

(c) A requirement that the company provide the office with the information and independent certification the office and the department deem necessary to verify qualified job training expenditures and eligibility for the credit under this section.

(4) In determining whether to authorize a credit under this section, the Michigan film office and the state treasurer shall consider all of the following:

(a) The extent to which the state certified qualified production and qualified job training expenditure may have the effect of promoting economic development or job creation in this state.

(b) The extent to which the credit may assist in attracting additional private investment for the production of motion pictures, videos, television programs, and digital media in this state.

(c) The extent to which the credit will encourage the development of film, video, television, and digital media production and postproduction expertise in this state.

(5) If the Michigan film office determines that a company has complied with the terms of an agreement entered into under this section, the office shall issue a qualified job training expenditure certificate to the company. The company shall submit a request to the office for a qualified job training expenditure certificate on a form prescribed by the office, along with any information or independent certification the office or the department deems necessary. The office shall process each request within 60 days after the request is complete. However, the office may request additional information or independent certification before issuing a certificate and need not issue the certificate until satisfied that qualified job training expenditures and eligibility are adequately established. The additional information requested may include a report of expenditures audited and certified by an independent certified public accountant. Each qualified job training expenditure certificate shall be signed by the Michigan film commissioner and shall include the following information:

(a) The name of the taxpayer.

(b) A description of the state certified qualified production and the qualified job training expenditures.

(c) The amount of the company's qualified job training expenditures for the state certified qualified production.

(d) The date on which production of the state certified qualified production began in this state, the date on which production of the state certified qualified production ended in this state, the total number of production days in this state, and the approximate total crew size for the state certified qualified production.

(e) The unique number assigned to the state certified qualified production by the office under subsection (3).

(f) The company's federal employer identification number or Michigan treasury number.

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

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

(7) To claim a credit under this section, a company shall submit a qualified job training expenditure certificate issued under subsection (5) to the department. If the credit allowed under this section exceeds the amount of taxes owed by the company under this act for a tax year, that portion of the credit that exceeds the tax liability of the company for the tax year shall not be refunded but may be carried forward as a credit against tax liability under this act in subsequent tax years for a period not to exceed 10 tax years.

(8) The credit under this section shall be claimed after all other credits under this act. The amount of the credit under this section shall be reduced by a credit application and redemption fee equal to 0.5% of the credit claimed, which shall be deducted from the credit otherwise payable to the taxpayer claiming the credit and be deposited by the department in the Michigan film promotion fund.

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

(10) As used in this section:

(a) "Below the line crew" means persons employed by an eligible production company for state certified qualified production expenditures made after production begins and before production is completed, including, but not limited to, a best boy, boom operator, camera loader, camera operator, assistant camera operator, compositor, dialogue editor, film editor, assistant film editor, focus puller, Foley operator, Foley editor, gaffer, grip, key grip, lighting crew, lighting board operator, lighting technician, music editor, sound editor, sound effects editor, sound mixer, steadicam operator, first assistant camera operator, second assistant camera operator, digital imaging technician, camera operator working with a director of photography, electric best boy, grip best boy, dolly grip, rigging grip, assistant key for makeup, assistant key for hair, assistant script supervisor, set construction foreperson, lead set dresser, assistant key for wardrobe, scenic foreperson, assistant propmaster, assistant audio mixer, assistant boom person, assistant key for special effects, and other similar personnel. Below the line crew does not include a producer, director, writer, actor, or other similar personnel.

(b) "Eligible production company" means that term as defined in section 455.

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

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

(e) "Qualified job training expenditure" means salary and other expenditures paid by an eligible production company to provide qualified personnel with on-the-job training as a member of the below the line crew for a state certified qualified production that is intended to upgrade or enhance the skills of the qualified personnel and address deficiencies in skills among residents of this state as determined by the office.

(f) "Qualified personnel" means a person who has resided in this state for not less than 12 months, who has legal status for employment, and who demonstrates sufficient prior experience or training in the film and digital media industry, as certified by the Michigan film office. Qualified personnel includes, but is not limited to, a person who has completed a training program at a Michigan proprietary school licensed by the department of labor and economic growth that offers a program of instruction in film and video production and has been designated with a classification of instructional programs code of 50 by the department of labor and economic growth and a person in an advanced crew position that meets the residency requirements of this subdivision and is hired and mentored by a key or supervisor. Qualified personnel do not include a person with fewer than 1 or more than 4 film credits in the same below the line crew position for which the eligible production company claimed a credit under this section.

(g) "Qualified personnel expenditure" means that term as defined under section 455.

(h) "State certified qualified production" means that term as defined in section 455.

Section 460. MCL 208.1460. Credit for Service Station Conversion of Fuel Delivery System. Service station owner; conversion or creation of fuel delivery systems to provide E85 fuel or qualified biodiesel blends; tax exemption; definitions.

(1) For tax years that begin after December 31, 2008 and end before January 1, 2012, subject to the limitations provided under this section, a taxpayer that is an owner of a service station may claim a credit against the tax imposed by this act equal to 30% of the cost incurred during the tax year to convert existing fuel delivery systems to provide E85 fuel or qualified biodiesel blends and to create new fuel delivery systems designed to provide E85 fuel or qualified biodiesel blends, not to exceed $20,000.00 per tax year per taxpayer.

(2) In determining the amount of the credit under subsection (1), a taxpayer shall not include any costs to convert existing fuel delivery systems to provide E85 fuel or qualified biodiesel blends or to create new fuel delivery systems designed to provide E85 fuel or qualified biodiesel blends for which the taxpayer received a grant under the service station matching grant program created under section 78 of the Michigan strategic fund act, 1984 PA 270, MCL125.2078.

(3) The total amount of all credits allowed under this section shall not exceed $1,000,000.00 per calendar year. If the credit allowed under this section exceeds the liability of the taxpayer for the tax year, that portion of the credit that exceeds the tax liability shall not be refunded.

(4) A taxpayer shall not claim a credit under this section unless the energy office has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the annual return filed under this act on which the credit under this section is claimed. The certificate required by this subsection shall state all of the following:

(a) The taxpayer is the owner of a service station and has converted existing fuel delivery systems to provide E85fuel or qualified biodiesel blends or created new fuel delivery systems designed to provide E85 fuel or qualified biodiesel blends, or both, during the tax year for which this credit is sought.

(b) The amount of the costs incurred by the taxpayer during the designated tax year to convert existing fuel delivery systems to provide E85 fuel or qualified biodiesel blends and to create new fuel delivery systems designed to provide E85 fuel or qualified biodiesel blends and the amount of any grant awarded during the designated tax year to the taxpayer based on the same costs.

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

(5) A taxpayer that claims a credit under this section and subsequently stops using the fuel delivery systems to provide E85 fuel or qualified biodiesel blends or within 3 years of receiving this credit may, as determined by the Michigan strategic fund, have its credit reduced or terminated or have a percentage of the credit amount previously claimed under this section added back to the tax liability of the taxpayer in the year that the taxpayer stops using the fuel delivery systems to provide E85 fuel or qualified biodiesel blends.

(6) As used in this section:

(a) "Biodiesel" means a fuel composed of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats, and, in accordance with standards specified by the American society for testing and materials, designated B100, and meeting the requirements of D-6751, as approved by the department of agriculture.

(b) "Biodiesel blend" means a fuel composed of a blend of biodiesel fuel with petroleum-based diesel fuel, suitable for use as a fuel in a compression-ignition internal combustion diesel engine.

(c) "E85 fuel" means a fuel blend containing between 70% and 85% denatured fuel ethanol and gasoline suitable for use in a spark-ignition engine and that meets American society for testing and materials D-5798 specifications.

(d) "Michigan strategic fund" means the Michigan strategic fund as described in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(e) "Qualified biodiesel blends" means any biodiesel blend that is blended on site utilizing on-demand bio-blending equipment that is installed after the effective date of the amendatory act that added this section.

Section 461. MCL 208.1461. Bonus Depreciation Credit. Tax credit by taxpayer other than regulated utility.

For tax years beginning after December 31, 2008 and ending before January 1, 2011, a taxpayer other than a regulated utility may claim a credit under this act equal to 0.42% of the amount of the deduction claimed for the 2008 tax year for bonus depreciation under section 168(k) of the internal revenue code apportioned as the tax base is apportioned under this act. If the amount of the credit exceeds the liability of the taxpayer, the excess shall not be refunded but may be carried forward for 10 years or until used up, whichever occurs first.

CHAPTER 5

Section 501. MCL 208.1501 Estimated returns, requirement, due dates, payments, interest, safe harbors, forms and first year or partial year.

(1) A taxpayer that reasonably expects liability for the tax year to exceed $800.00 shall file an estimated return and pay an estimated tax for each quarter of the taxpayer's tax year.

(2) For taxpayers on a calendar year basis, the quarterly returns and estimated payments shall be made by April 15, July 15, October 15, and January 15. Taxpayers not on a calendar year basis shall file quarterly returns and make estimated payments on the appropriate due date which in the taxpayer's fiscal year corresponds to the calendar year.

(3) Except as otherwise provided under this subsection, the estimated payment made with each quarterly return of each tax year shall be for the estimated business income tax base and modified gross receipts tax base for the quarter or 25% of the estimated annual liability. The second, third, and fourth estimated payments in each tax year shall include adjustments, if necessary, to correct underpayments or overpayments from previous quarterly payments in the tax year to a revised estimate of the annual tax liability. For a taxpayer that calculates and pays estimated payments for federal income tax purposes pursuant to section 6655(e) of the internal revenue code, that taxpayer may use the same methodology as used to calculate the annualized income installment or the adjusted seasonal installment, whichever is used as the basis for the federal estimated payment, to calculate the estimated payments required each quarter under this section. A penalty for underpayment of an estimated tax under this act shall not be assessed for a tax year that ends before December 1, 2009 if the taxpayer paid 75% of the tax due under this act for the tax year.

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

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

(b) For the 2009 tax year and each subsequent tax year, if the preceding year's tax liability under this act was $20,000.00 or less and if the taxpayer submitted 4 equal installments the sum of which equals the immediately preceding tax year's tax liability.

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

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

(7) Payments made under this section shall be a credit against the payment required with the annual tax return required in section 505.

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

(9) A taxpayer that elects under the internal revenue code to file an annual federal income tax return by March 1 in the year following the taxpayer's tax year and does not make a quarterly estimate or payment, or does not make a quarterly estimate or payment and files a tentative annual return with a tentative payment by January 15 in the year following the taxpayer's tax year and a final return by April 15 in the year following the taxpayer's tax year, has the same option in filing the estimated and annual returns required by this act.

Section 503. MCL 208.1503 Computation of tax for portion of year.

If a taxpayer's tax year to which this act applies ends before December 31, 2008 or if a taxpayer's first tax year is less than 12 months then a taxpayer subject to this act may elect to compute the tax imposed by this act for the portion of that tax year to which this act applies or that first tax year in accordance with 1 of the following methods:

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

(b) The tax may be computed by determining the business income tax base and modified gross receipts tax base in the first tax year in accordance with an accounting method satisfactory to the department that reflects the actual business income tax base and modified gross receipts tax base attributable to the period.

Section 505. MCL 208.1505 Annual or final return; date of filing; extension.

(1) An annual or final return shall be filed with the department in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year. Any final liability shall be remitted with this return. A taxpayer, other than a taxpayer subject to the tax imposed under chapter 2A or 2B, whose apportioned or allocated gross receipts are less than $350,000.00 does not need to file a return or pay the tax imposed under this act.

(2) If a taxpayer has apportioned or allocated gross receipts for a tax year of less than 12 months, the amount in subsection (1) shall be multiplied by a fraction, the numerator of which is the number of months in the tax year and the denominator of which is 12.

(3) The department, upon application of the taxpayer and for good cause shown, may extend the date for filing the annual return. Interest at the rate under section 23(2) of 1941 PA 122, MCL 205.23, shall be added to the amount of the tax unpaid for the period of the extension.

The treasurer shall require with the application payment of the estimated tax liability unpaid for the tax period covered by the extension.

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

Section 507. MCL 208.1507 Returns; filing requirements; true and correct copy of federal return; amended returns.

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

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

Section 509. MCL 208.1509 Information return required by internal revenue code; filing required.

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

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

Section 511. MCL 208.1511 Unitary business group; combined return filing requirement; adjustments.

A unitary business group shall file a combined return that includes each United States person, other than a foreign operating entity, that is included in the unitary business group. Each United States person included in a unitary business group or included in a combined return shall be treated as a single person and all transactions between those persons included in the unitary business group shall be eliminated from the business income tax base, modified gross receipts tax base, and the apportionment formula under this act. If a United States person included in a unitary business group or included in a combined return is subject to the tax under chapter 2A or

2B, any business income attributable to that person shall be eliminated from the business income tax base, any modified gross receipts attributable to that person shall be eliminated from the modified gross receipts tax base, and any sales attributable to that person shall be eliminated from the apportionment formula under this act.

Section 513. MCL 208.1513 Administration of tax; rules; forms; preparation and publication of statistics.

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

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

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

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

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

Section 515. MCL 208.1515 Distribution to school aid fund; deposit of balance to general fund; "United States consumer price index" defined.

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

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

Section 517. MCL 208.1517 Implementation of act; appropriation; carrying forward unexpended funds.

There is appropriated to the department for the 2006-2007 state fiscal year the sum of $1,000,000.00 to begin implementing the requirements of this act. Any portion of this amount under this section that is not expended in the 2006-2007 state fiscal year shall not lapse to the general fund but shall be carried forward in a work project account that is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for the following state fiscal year.

Section 519. MCL 208.1519 Severability of provisions.

If a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired determines that any provision of this act that provides a deduction, credit, or exemption with respect to employment, persons, services, investment, or any other activity that is limited only to this state is unconstitutional or applies to employment, persons, services, investment, or any other activity outside of this state, that credit, deduction, or exemption shall be severed and shall not be in effect for any other tax year for which the final order shall apply, and the remaining provisions of this act shall remain in effect.

Section 601. MCL 208.1601 Refund of excess amounts; deposit into countercyclical budget and economic stabilization fund; definitions.

(1) For the 2008 fiscal year, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act plus any net cash payments from former 1975 PA 228 less any net cash payments made by insurance companies under either act exceed the fiscal year 2008 base, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40% shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. To calculate the fiscal year 2008 base, multiply $2,619,100,000.00 by 1.0075 and then multiply this product by the United States consumer price index for fiscal year 2008 and then divide this product by the United States consumer price index for fiscal year 2007.

(2) For the 2009 fiscal year, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act, excluding any revenue collected pursuant to chapter 2A, exceed the fiscal year 2009 base, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40%shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. To calculate the fiscal year 2009 base, multiply $3,051,500,000.00 by 1.015 and then multiply this product by the United States consumer price index for fiscal year 2009 and then divide this product by the United States consumer price index for fiscal year 2007.

(3) For the 2010 fiscal year and each fiscal year after 2010, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act, excluding any

revenue collected pursuant to chapter 2A, exceed the fiscal year base, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40% shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. To calculate the fiscal year base, multiply the fiscal year base for the immediately preceding fiscal year by 1.0075 and then multiply this product by the United States consumer price index for the fiscal year and divide this product by the United States consumer price index for the immediately preceding fiscal year.

(4) If the amount of the total net cash payments collected from the tax imposed under this act, excluding any revenue collected pursuant to chapter 2A, exceeds the amount described in the applicable subsection by less than $5,000,000.00, then all of that excess shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351.

(5) For the 2008 fiscal year, the refund available under subsection (1) shall be applied pro rata to the taxpayers that made positive net cash payments during the fiscal year. The taxpayer's pro rata share shall be the total amount to be refunded under subsection (1) multiplied by a fraction the numerator of which is the positive net payments made by the taxpayer during the fiscal year and the denominator of which is the sum of the positive net cash payments made by all taxpayers during the fiscal year. For each fiscal year after the 2008 fiscal year, the refund available under subsection (2) or (3) shall be applied pro rata to the taxpayers that claimed 1 or more credits under section 403 or 405 during the immediately preceding fiscal year. The taxpayer's pro rata share shall be the total amount to be refunded under subsection (2) or (3) multiplied by a fraction the numerator of which is the credits claimed under sections 403 and 405 by the taxpayer during the immediately preceding fiscal year and the denominator of which is the sum of the credits claimed under sections 403 and 405 by all taxpayers during the immediately preceding fiscal year.

(6) As used in this section:

(a) "Fiscal year" means the state fiscal year that commences October 1 and continues through September 30.

(b) "Net cash payments" for the fiscal year are equal to cash annual and estimated payments made during the fiscal year less refunds paid during the fiscal year. Refunds paid under this section are not used to reduce net cash payments for purposes of calculating refunds paid out under this section.

(c) "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics.