

Brownfield Zone Credit

An eligible taxpayer may claim a credit against the Single Business Tax for a percentage of the taxpayer's eligible investment in a brownfield redevelopment project. To be eligible, a taxpayer must have a preapproval letter for a brownfield project issued after December 31, 1999 and before January 1, 2008 **and** the project must be completed within five years after the preapproval letter is issued. (MCL 208.38g(1))

The credit is equal to the following:

- If the total of **all** credits for a project is \$1 million or less, the credit is 10% of the cost of the qualified taxpayer's eligible investment. (MCL 208.38g(1)(a))
- If the total of **all** credits for a project exceed \$1 million but not more than \$30 million, the credit is a percentage of the cost of eligible investment as determined by the Michigan Economic Growth Authority (MEGA), but not more than 10% of the cost of the eligible investment. (MCL 208.38g(1)(b))

In all cases, if the eligible investment exceeds the amount stated in the preapproval letter for that project, the total of all credits for the project cannot exceed the total of all credits on the certificate of completion. (MCL 208.38g(1))

Definitions for Purposes of the Brownfield Credit

A **"project"** is the total of all eligible investment on an eligible property or for purposes of the Section 38g(5) limitations on projects, all eligible investment on property not in a qualified local government unit that is a facility. (MCL 208.38g(33)(k)) Effective April 10, 2006, a "project" includes all eligible investment on property that is not a facility but is functionally obsolete or blighted.

The preapplication process deals with the preapproval of a project. At the point when a project is actually completed and a certificate of completion has been issued, a credit may then be claimed by a taxpayer.

An **"eligible taxpayer"** is an eligible business that meets one or more of the following criteria as contained in the Michigan Economic Growth Authority Act (MCL 207.808(5)):

- (1) Is located in Michigan on the date of the application, makes new capital investment of \$250 million in Michigan, and maintains 500 retained jobs, as determined by MEGA.
- (2) Meets either of the following criteria:
 - (a) relocates production of a product to Michigan after the date of the application, makes new capital investment of \$500 million in Michigan, and maintains 500 retained jobs, as determined by MEGA;
 - (b) maintains 150 retained jobs at a facility, maintains 1,000 or more full-time jobs in Michigan, and makes new capital investment in Michigan; or

(c) is located in Michigan on the date of the application, maintains at least 100 retained jobs at a single facility, and agrees to make new capital investment at that facility equal to the greater of \$150,000 per retained job maintained at that facility or \$15 million to be completed no later than December 31, 2006.

(3) Is a distressed business. (MCL 208.38g(33)(f))

The terms **“authorized business,” “full-time job,” “new capital investment,” “retained jobs,”** and **“written agreement”** mean the same as those terms are defined by the Michigan Economic Growth Authority Act. (MCL 208.38g(33)(c))

A **“qualified taxpayer”** is a taxpayer that: (1) owns or leases eligible property; and (2) certifies that the Michigan Department of Environmental Quality has not sued or issued a unilateral order to the taxpayer 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. (MCL 208.38g(34)(n))

“Eligible investment” means 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. These activities must occur after the date that eligible activities on the property have begun under a brownfield plan and after a preapproval letter has been issued. The date that a preapproval letter is issued does not apply to 1 project whose construction began after January 1, 2000 and before January 1, 2001 without MEGA determining that the project would not occur in Michigan without this credit, if the costs of the 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, etc., is considered to be eligible property if the lease has a minimum term of 10 years or is for the expected useful life of the machinery, etc., and if the owner of the machinery, etc. is not the qualified taxpayer with regard to that machinery, equipment or fixtures. (MCL 208.38g(34)(e))

Investment attributable or related to the operation of, or associated or affiliated with the operation of, a sports stadium or a casino is not eligible for the credit. Also, eligible investment does not include investment attributable or related to the construction or expansion of a landfill. (MCL 208.38g(27, 28 and 29))

Environmental response activities, for example, environmental assessment activities, due care plans, and remediation costs are not eligible investments. Reimbursed costs and land costs are also not eligible investments.

“Eligible property” means property for which eligible activities are identified in a brownfield plan under the Brownfield Redevelopment Financing Act, that was used or is currently used for commercial, industrial, or residential purposes and is either a facility (environmentally contaminated property), functionally obsolete, or blighted or 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

or tax-reverted property owned or under the control of a land bank fast track authority. Functionally obsolete or blighted property must be located in a qualified local governmental unit. Eligible property for the purpose of the credit is designated by the local Brownfield Redevelopment Financing Authority in an approved brownfield plan. An existing brownfield plan may be amended to apply to additional parcels of eligible property. (MCL 208.38g(34)(f))

Effective April 10, 2006, **“eligible property”**, for purposes of projects with credits totaling under \$200,000, all of the following apply: (MCL 208.38g(34)(f))

- Eligible property means property identified under a brownfield plan that was used or is currently used for commercial, industrial, or residential purposes and that is one of the following:
 - (a) 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;
 - (b) property that is not in a qualified local governmental unit but is within a downtown development district and is functionally obsolete or blighted, and a component of the project on that eligible property is one or more of the following:
 - (i) infrastructure improvements that directly benefit the eligible property,
 - (ii) demolition of structures that is not response activity under the Natural Resources and Environmental Protection Act,
 - (iii) lead or asbestos abatement, and/or
 - (iv) site preparation that is not response activity;
 - (c) property for which eligible activities under the brownfield plan, is not in a qualified local government unit, and is a facility.
- 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.
- Eligible property includes, to the extent included in the brownfield plan, personal property located on the eligible property.
- Eligible property does not include qualified agricultural property exempt from the tax levied by a local school district for school operating purposes (MCL 208.38g(f))

“Eligible activities” mean baseline environmental assessment activities, due care activities, additional response activities and relocation of public buildings or operations for economic development purposes. In a qualified governmental unit, eligible activities also mean infrastructure improvements that directly benefit eligible property; demolition of structures; lead or asbestos abatement; and site preparation. Effective July 22, 2005, for a qualified facility that is not located in a qualified local governmental unit, that is owned or under the control of a land bank fast track authority, or, effective February 23, 2006, that is located in an economic opportunity zone, and is a facility, functionally obsolete, or blighted, the following additional activities are also eligible

activities: infrastructure improvements that directly benefit eligible property; demolition of structures that is not response activity; lead or asbestos abatement; and site preparation that is not response activity. An "economic opportunity zone" means one or more parcels of property that meet all of the following: that together are 40 or more acres in size; that contain a manufacturing facility that consists of 500,000 or more square feet; and that are located in a municipality that has a population of 30,000 or less and that is contiguous to a qualified local governmental unit. (MCL 208.38g(34)(g))

A multiphase project is a project for which the total of all credits is \$1 million or less for a project approved under Subsection 2 that has more than one component, each of which can be completed separately. (MCL 208.38g(34)(i))

The addition of leased equipment, machinery, or fixtures qualified for eligible investment if the lease has a minimum term of 10 years or is for the expected useful life of the property. 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 leased machinery, equipment or fixtures 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 MEGA. (MCL 208.38g(34)(e))

Rules for Claiming the Credit

When a project is completed, the taxpayer must submit documentation to that effect, an accounting of the project's cost, and the eligible investment of each taxpayer if there is more than one taxpayer 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 that eligible property when all eligible investment of the taxpayer was made. The chairman of MEGA must verify that the project is completed. If a project is approved by MEGA, then an on-site inspection must be made as part of the verification process. (MCL 208.38g(8))

A request for a certificate of completion must be received at least 45 days before the ending date of the tax year for which the taxpayer wishes to take the credit. If an on-site inspection by MEGA is required, 90 days must be allowed for processing the request. Requests received later will still be processed, but may not be processed before the end of the tax year.

When the project's completion is verified, a certificate of completion must be issued to each qualified taxpayer that has made eligible investment on that eligible property. The certificate of completion must state the total amount of all credits for the project and that total cannot exceed the maximum total of all credits listed in the preapproval letter for the project. For a MEGA-approved project for which the total of all credits is between \$10–30 million, the certificate of completion must state the total of all credits and the schedule on which the annual credit amount must be claimed by the taxpayer. (MCL 208.38g(8))

For a multiphase project, 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. (MCL 208.38g(8))

The credit must be claimed in the tax year when the certificate of completion is issued. Each qualified taxpayer and assignee claiming a credit must attach a copy of the certificate of completion and, if the credit was assigned, a copy of the assignment form to the annual SBT return. An assignee of a credit based on a multiphase project must attach a copy of the assignment form and the component completion certificate to the annual return on which the credit is claimed but is not required to file a copy of a certificate of completion. For a project approved by MEGA for which the total of all credits is more than \$10 million but \$30 million or less, the taxpayer may claim 10% of its approved credit each year for 10 years, starting with the first year specified by MEGA on the certificate of completion. A credit assigned based on a multiphase project must be claimed in the year in which the credit is assigned. (MCL 208.38g(9, 12 and 13))

The brownfield credits must be calculated after all other Single Business Tax credits except the MEGA credits allowed for new jobs under (MCL 208.37c), an authorized business activity under (MCL 208.37d), and retaining jobs under (MCL 208.38g(20)).

If the credit allowed for the tax year and any unused carryforward of the credit exceed the taxpayer's or assignee's tax liability for the tax year, the excess is not refunded but may be carried forward up to 10 years, or until used up, whichever is first. The maximum time allowed under this carryover provision starts with the tax year when the certificate of completion is issued to the taxpayer. If the taxpayer assigns all or part of its approved credit, the maximum time allowed to carryforward the credit for an assignee starts to run with the tax year when the assignment is made and the assignee first claims a credit, which must be the same tax year. The maximum time allowed to carryforward an annual credit amount of a MEGA-approved starts to run in the tax year for which the annual credit amount is designated on the certificate of completion. (MCL 208.38g(15))

If personal property used to calculate the credit is sold, disposed of, or transferred to another location, there is an addition to tax liability of the taxpayer who was originally awarded the credit in the year when the sale, disposal, or transfer occurs. This addition to tax liability occurs even if the credit was assigned to someone else. The additional tax liability is calculated by multiplying the same percentage that is used to calculate the credit (for example, 10%) times the federal basis of the property used to calculate gain or loss as of the date of sale, disposition, or transfer. The amount otherwise added to the tax liability may also be used to reduce any carry forward of credits available to the taxpayer. (MCL 208.38g(16))

For projects approved for which a certificate of completion is issued on and after January 1, 2006, a qualified taxpayer may assign all or part of a credit allowed. A credit assignment is irrevocable and, except for a credit assignment based on a multiphase project, must 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. If the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer must claim the portion it claims in the tax year in which a certificate of completion is issued. An assignee may subsequently assign a credit or any portion of a credit assigned under this provision to one or more assignees. An assignment made under this provision cannot be made after 10 years after the first tax year in which that credit may be claimed. The credit assignment or a subsequent reassignment must be made on a form prescribed by MEGA. The qualified taxpayer must send a copy of the completed assignment form to MEGA in the tax year in which an assignment or reassignment is made. An assignee or subsequent reassignee must attach a copy of the completed assignment form to its annual SBT return for the tax year in which the assignment or reassignment is made and the assignee or reassignee first claims a credit, which must be the same tax year. (MCL 208.35e(1))

A credit for a component of a multiphase project that is completed on or after January 1, 2006 may also be assigned. In addition to all other procedures and requirements, the following apply if the total for all credits for a project is more than \$10 million but \$30 million or less:

- The credit must be assigned based on the schedule contained in the certificate of completion;
- If the qualified taxpayer assigns all or part of the credit amount, the qualified taxpayer must assign the annual credit amount for each tax year separately; and
- More than one annual credit amount may be assigned to any one assignee and the qualified taxpayer may assign all or part of each annual credit amount to any assignee. (MCL 208.38e(1))

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