

HOUSE BILL No. 4367

March 1, 2007, Introduced by Rep. Farrah and referred to the Committee on Tax Policy.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 1

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

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1 "Michigan business tax act".

2 Sec. 2. (1) The tax imposed under this act is an indivisible
3 tax and not a combination or series of smaller taxes. The
4 legislature finds that the tax base calculated and apportioned
5 under this act is a reasonable measure of a taxpayer's business
6 activity in this state.

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

14 Sec. 3. (1) "Affiliated group" means 2 or more United States
15 persons, 1 of which owns or controls, directly or indirectly, more
16 than 50% of the ownership interest with voting rights of the other
17 United States persons.

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

1 his or her business activities, each activity shall be considered
2 to be business engaged in within the meaning of this act.

3 (3) "Business income" means federal taxable income plus the
4 amount of a deduction claimed under section 199 of the internal
5 revenue code related to domestic production activities, except that
6 for a person other than a corporation business income means that
7 part of federal taxable income derived from business activity plus
8 the amount of a deduction claimed under section 199 of the internal
9 revenue code related to domestic production activities. For a
10 partnership, business income includes payments and items of income
11 and expense that are attributable to business activity of the
12 partnership and separately reported to the partners.

13 Sec. 4. (1) "Casual transaction" means a transaction made or
14 engaged in other than in the ordinary course of repeated and
15 successive transactions of a like character, except that a
16 transaction made or engaged in by a person that is incidental to
17 that person's regular business activity is a business activity
18 within the meaning of this act. A transaction that is incidental to
19 a person's regular business activity includes transactions that
20 occur as a result of or in connection with the person's regular
21 business activity. Sales of intangible investment assets by an
22 individual that are not incidental to the individual's regular
23 business activity, and that result in gross receipts of less than
24 \$350,000.00 in any 1 tax year, are considered not to be repeated
25 and successive, and are considered to be casual transactions.

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

1 (3) Except as otherwise provided in subsections (4) and (5),
2 "compensation" means all wages, salaries, fees, bonuses,
3 commissions, or other payments made in the tax year on behalf of or
4 for the benefit of employees, officers, or directors of the
5 taxpayers. Compensation includes, but is not limited to, payments
6 that are subject to or specifically exempt or excepted from
7 withholding under sections 3401 to 3406 of the internal revenue
8 code. Compensation also includes, on a cash or accrual basis
9 consistent with the taxpayer's method of accounting for federal
10 income tax purposes, payments to individuals not currently working,
11 payments to dependents and heirs of individuals based on current or
12 previous labor services rendered by those individuals, payments to
13 a pension, retirement, or profit sharing plan, and payments for
14 insurance for which employees are the beneficiaries, including
15 payments under health and welfare and noninsured benefit plans and
16 payment of fees for the administration of health and welfare and
17 noninsured benefit plans. Compensation does not include any of the
18 following:

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

22 (b) Payments to an independent contractor.

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

25 (d) The employer's portion of payments under the federal
26 insurance contributions act, chapter 21 of subtitle C of the
27 internal revenue code, 26 USC 3101 to 3128, the railroad retirement

1 tax act, chapter 22 of subtitle C of the internal revenue code, 26
2 USC 3201 to 3233, and similar social insurance programs.

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

6 (f) Payments under health and welfare and noninsured benefit
7 plans for the benefit of persons who are residents of this state
8 and payments of fees for the administration of health and welfare
9 and noninsured benefit plans for the benefit of persons who are
10 residents of this state.

11 (4) Except as otherwise provided in subsection (5), for
12 purposes of determining compensation of a professional employer
13 organization, compensation includes payments by the professional
14 employer organization to the officers and employees of an entity
15 whose employment operations are managed by the professional
16 employer organization. Except as otherwise provided in subsection
17 (5), compensation of the entity whose employment operations are
18 managed by a professional employer organization does not include
19 compensation paid by the professional employer organization to the
20 officers and employees of the entity whose employment operations
21 are managed by the professional employer organization.

22 (5) Notwithstanding the provisions of subsection (4), the
23 following apply:

24 (a) A professional employer organization and a client may
25 jointly elect, in a manner determined by the department, to include
26 in the compensation of the client, and exclude from the
27 compensation of the professional employer organization,

1 compensation paid by the professional employer organization to the
2 officers of the client and to employees of the professional
3 employer organization who are assigned to and perform services for
4 the client and who are not temporary employees.

5 (b) Officers and employees of a client that has made an
6 election under subdivision (a) include employees for whom the
7 professional employer organization is required to withhold taxes
8 for federal income tax purposes. This subdivision does not apply to
9 compensation paid to a temporary employee.

10 (c) A professional employer organization that has made an
11 election under subdivision (a) shall submit to the client, within
12 30 days after the end of the client's tax year, a statement
13 reporting the compensation paid to employees and officers of the
14 client that was reimbursed by the client. If the report required by
15 this subdivision is not submitted, the amount of compensation shall
16 be considered to be the entire amount paid by the client to the
17 professional employer organization.

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

20 (7) "Department" means the department of treasury.

21 Sec. 5. (1) "Employee" means an employee as defined in section
22 3401(c) of the internal revenue code. A person from whom an
23 employer is required to withhold for federal income tax purposes is
24 prima facie considered an employee.

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

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

3 (4) "Financial organization" means all of the following:

4 (a) Bank.

5 (b) Industrial bank.

6 (c) Trust company.

7 (d) Building and loan or savings and loan association.

8 (e) Bank holding company as defined in 12 USC 1841.

9 (f) Credit union.

10 (g) Safety and collateral deposit company.

11 (h) Regulated investment company as defined in the internal
12 revenue code.

13 (i) Securitization entity the sole business activity of which
14 is to issue securities that provide for a fixed principal amount or
15 similar amount and that are primarily serviced by the cash flows of
16 a discrete pool, either fixed or revolving, of receivables or other
17 assets that by their terms convert into cash in a finite period of
18 time.

19 (j) Person, firm, corporation, or any other legal entity,
20 without regard to classification for tax purposes, which derives
21 more than 50% of its gross receipts from 1 or more of the following
22 activities:

23 (i) Making, acquiring, selling, or servicing loans or
24 extensions of credit. Loans and extensions of credit include any of
25 the following:

26 (A) Secured or unsecured consumer loans.

27 (B) Installment obligations.

1 (C) Mortgages or other loans secured by real estate or
2 tangible personal property.

3 (D) Credit card loans.

4 (E) Secured and unsecured commercial loans of any type.

5 (F) Loans arising in factoring.

6 (ii) Leasing or acting as an agent, broker, or advisor in
7 connection with leasing real and personal property that is the
8 economic equivalent of an extension of credit if the transaction is
9 not treated as a lease for federal income tax purposes.

10 (iii) Motor vehicle leasing in which the lessee has a right or
11 obligation to purchase the vehicle at the end of the lease term.

12 (iv) Operating a credit card business.

13 (v) Rendering estate or trust services.

14 (vi) Receiving, maintaining, or otherwise handling deposits.

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

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

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

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

27 (a) Proceeds from sales by a principal that the taxpayer

1 collects in an agency capacity solely on behalf of the principal
2 and delivers to the principal.

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

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

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

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

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

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

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

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

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

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

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

18 (g) Proceeds from any of the following:

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

20 (ii) The original issue of debt instruments.

21 (h) Refunds from returned merchandise.

22 (i) Cash and in-kind discounts.

23 (j) Trade discounts.

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

25 (l) Security deposits.

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

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

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

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

11 (2) "Insurance company" means an authorized insurer as defined
12 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
13 500.106.

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

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

19 (a) The stock of goods held for resale in the regular course
20 of trade of a retail or wholesale business.

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

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

24 (d) Property accounted for as inventory according to generally
25 accepted accounting principles and reflected on the balance sheets
26 of the taxpayer.

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

1 (i) Personal property under lease or principally intended for
2 lease rather than sale.

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

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

7 (a) The chairperson of the board.

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

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

12 Sec. 7. (1) "Partner" means a partner or member of a
13 partnership.

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

16 (3) "Person" means an individual, firm, bank, financial
17 institution, limited partnership, copartnership, partnership, joint
18 venture, association, corporation, receiver, estate, trust, or any
19 other group or combination of groups acting as a unit.

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

27 (a) Maintaining the right of direction and control of

1 employees' work, although this responsibility may be shared with
2 the other entity.

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

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

7 (d) Retaining the right to hire and fire employees.

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

11 (6) "Revenue mile" means the transportation for a
12 consideration of 1 net ton in weight or 1 passenger the distance of
13 1 mile.

14 Sec. 8. (1) "Sale" or "sales" means, except as provided in
15 subdivision (d), the amounts received by the taxpayer as
16 consideration from the following:

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

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

1 and subdivision (a).

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

5 (d) If the taxpayer is not a dealer in marketable securities,
6 sale or sales do not include interest earned on marketable
7 securities.

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

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

18 Sec. 9. (1) "Tax base" means gross receipts before
19 apportionment or allocation plus the additions provided in this
20 section.

21 (2) Add the total value of assets at the beginning of the tax
22 year as determined under subdivision (a), not including inventory,
23 or for a financial organization or a mortgage company as defined in
24 section 45, the average value of property owned by the taxpayer as
25 determined under subdivision (b):

26 (a) The total asset value of the taxpayer is the value of
27 assets reported in accordance with generally accepted accounting

1 principles, including the assets of each entity included in a
2 combined or consolidated return. As used in this subdivision,
3 "assets" includes the following subparagraphs (i) through (x) and
4 excludes subparagraphs (xi) through (xv):

5 (i) Cash.

6 (ii) Trade notes and accounts receivable.

7 (iii) Loans to shareholders.

8 (iv) Mortgage and real estate loans.

9 (v) Other investments.

10 (vi) Buildings and other depreciable assets less accumulated
11 depreciation.

12 (vii) Depletable assets less accumulated depreciation.

13 (viii) Land, net of amortization.

14 (ix) Amortizable intangible assets, less accumulated
15 amortization.

16 (x) Other assets.

17 (xi) United States treasury securities or other United States
18 government obligations exempted from state taxation under federal
19 law.

20 (xii) Tax exempt obligations.

21 (xiii) Goodwill.

22 (xiv) Assets the situs of which is outside the United States.

23 (xv) Deferred tax assets.

24 (b) Real and tangible personal property owned by the taxpayer
25 is valued at its original cost. The average value of the taxpayer's
26 real and tangible personal property is determined by averaging the
27 values at the beginning and ending of the tax year, unless the

1 treasurer requires the periodic averaging of values during the tax
2 year if the treasurer determines that periodic averaging is
3 reasonably required to reflect properly the average value of the
4 taxpayer's property.

5 (3) If business income less, to the extent included in federal
6 taxable income, dividends received or considered received including
7 the foreign dividend gross-up provided for in the internal revenue
8 code is greater than zero, multiply that amount by 15 and add the
9 result to the tax base. Business income attributable to an
10 ownership interest in a partnership shall not be included in the
11 calculation under this subsection if the partnership is separately
12 subjected to this tax.

13 Sec. 10. (1) "Tax" means the tax imposed under this act,
14 including interest and penalties under this act, unless the term is
15 given a more limited meaning in the context of this act or a
16 provision of this act.

17 (2) "Tax year" means the calendar year, or the fiscal year
18 ending during the calendar year, upon the basis of which the tax
19 base of a taxpayer is computed under this act. If a return is made
20 for a fractional part of a year, tax year means the period for
21 which the return is made. Except for the first return required by
22 this act, a taxpayer's tax year is for the same period as is
23 covered by its federal income tax return. A person that has a 52-
24 or 53-week tax year beginning not more than 7 days before December
25 31 of any year is considered to have a tax year beginning after
26 December of that tax year.

27 (3) "Taxpayer" means a person, an affiliated group that elects

1 to file a consolidated return, or a unitary business liable for a
2 tax, interest, or penalty under this act.

3 (4) "Temporary employee" means an employee that meets both of
4 the following criteria:

5 (a) The wages and other compensation of the employee are
6 determined exclusively by the entity that supplies the temporary
7 employee.

8 (b) The employee is employed by an entity that provides the
9 employee primarily for the purpose of meeting temporary or seasonal
10 employee needs of an entity's customers.

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

13 (6) "Unrelated business activity" means any business activity
14 that gives rise to unrelated taxable income as defined in the
15 internal revenue code.

16 Sec. 11. (1) A foreign person shall calculate business income
17 under this section and, except as otherwise provided in this
18 section, the tax base of a foreign person is subject to all
19 adjustments and other provisions of this act.

20 (2) Except as otherwise provided in this section, except for a
21 taxpayer that pays the tax imposed under sections 21 and 22, the
22 tax base of a foreign person includes the sum of business income
23 and the additions under section 9 that are related to United States
24 business activity, whether or not the foreign person is subject to
25 taxation under the internal revenue code.

26 (3) Compensation of a foreign person is total compensation
27 paid to employees, officers, and directors of the foreign person

1 for services performed in the United States.

2 (4) Notwithstanding the provisions of subsection (3), a
3 foreign person that does not have a permanent establishment in the
4 United States and whose business activity consists of the
5 transportation of persons or property for others by motor vehicle
6 may elect for purposes of this section to calculate compensation
7 related to United States business activity by 1 of the following
8 methods:

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

11 (b) Calculate compensation by determining total compensation
12 everywhere, apportioned to the United States by a formula, the
13 numerator of which is revenue miles traveled in the United States
14 and the denominator of which is revenue miles traveled everywhere.

15 (5) To calculate business income and the additions under
16 section 9 that are related to United States business activity, a
17 foreign person that does not have a permanent establishment in the
18 United States during the tax year or that is not subject to
19 taxation under the internal revenue code for the tax year may use
20 amounts that reasonably approximate the federal taxable income and
21 the permitted deductions the person would have had had the person
22 been subject to the internal revenue code, provided the foreign
23 person does not in the ordinary course of its business maintain tax
24 or financial accounting records in accordance with the tax
25 accounting requirements of the internal revenue code. The tax base
26 of a foreign person described in this subsection shall not include
27 gross income from sales shipped or delivered to any purchaser

1 within the United States and for which title transfers outside the
2 United States.

3 (6) To calculate business income and the additions under
4 section 9 that are related to United States business activity, a
5 Canadian person that is subject to Canadian federal income tax
6 under the income tax act (R.S.C. 1985, c. 1 (5th Supp)) may use
7 amounts properly calculated under the income tax act (R.S.C. 1985,
8 c. 1 (5th Supp)) to reasonably approximate business income and the
9 additions under section 9 that are related to United States
10 business activity. Amounts calculated under this subsection are
11 presumed to reasonably approximate business income and the
12 additions under section 9 that are related to United States
13 business activity. The tax base of a Canadian person shall not
14 include gross income from sales shipped or delivered to any
15 purchaser within the United States and for which title transfers
16 outside the United States. As used in this subsection, "Canadian
17 person" means a foreign person that does not have a permanent
18 establishment in the United States during the tax year or that is
19 not subject to taxation under the internal revenue code for the tax
20 year and is either of the following:

21 (a) An entity formed under the laws of Canada or a province of
22 Canada.

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

25 (7) As used in this section:

26 (a) "Business income" means, for a foreign person, gross
27 income attributable to the taxpayer's United States business

1 activity and gross income derived from sources within the United
2 States minus the deductions allowed under the internal revenue code
3 that are related to that gross income. Gross income includes the
4 proceeds from sales shipped or delivered to any purchaser within
5 the United States and for which title transfers within the United
6 States; proceeds from services performed within the United States;
7 and a pro rata proportion of the proceeds from services performed
8 both within and outside the United States, based on cost of
9 performance.

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

16 (c) "Gross receipts" means, for a foreign person, gross
17 receipts as defined in section 6(1) from United States business
18 activity or from sources within the United States. Gross receipts
19 includes all sales for which title transfers within the United
20 States; proceeds from all services performed within the United
21 States; and a pro rata portion of proceeds from services performed
22 both within and outside of the United States based on costs of
23 performance.

24 (d) "Permanent establishment" means either of the following:

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

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

3 (3) The tax calculated under this section is in lieu of all
4 other privilege or franchise fees or taxes imposed by any other law
5 of this state, except taxes on real and personal property, taxes
6 collected under the general sales tax act, 1933 PA 167, MCL 205.1
7 to 205.78, and taxes collected under the use tax act, 1937 PA 94,
8 MCL 205.91 to 205.111, and except as otherwise provided in this act
9 and in the insurance code of 1956, 1956 PA 218, MCL 500.100 to
10 500.8302.

11 Sec. 22. (1) An insurance company is subject to the tax
12 imposed by this act or by section 476a of the insurance code of
13 1956, 1956 PA 218, MCL 500.476a, if applicable, whichever is
14 greater.

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

16 (3) Notwithstanding section 72, an insurance company shall
17 file the annual return required under this act before March 2 after
18 the end of the tax year, and an automatic extension under section
19 72(4) is not available.

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

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

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

6 Sec. 23. (1) The following are exempt from the tax imposed by
7 this act:

8 (a) The United States, this state, other states, and the
9 agencies, political subdivisions, and enterprises of the United
10 States, this state, and other states.

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

22 (i) An organization included under section 501(c)(12) or
23 501(c)(16) of the internal revenue code.

24 (ii) An organization exempt under section 501(c)(4) of the
25 internal revenue code that would be exempt under section 501(c)(12)
26 of the internal revenue code except that it failed to meet the
27 requirements in section 501(c)(12) that 85% or more of its income

1 consist of amounts collected from members.

2 (iii) The adjusted tax base attributable to the activities
3 giving rise to the unrelated taxable business income of an exempt
4 person.

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

14 (d) That portion of the tax base attributable to the
15 production of agricultural goods by a person whose primary activity
16 is the production of agricultural goods. "Production of
17 agricultural goods" means commercial farming, including, but not
18 limited to, cultivation of the soil; growing and harvesting of an
19 agricultural, horticultural, or floricultural commodity; dairying;
20 raising of livestock, bees, fish, fur-bearing animals, or poultry;
21 or turf or tree farming, but does not include the marketing at
22 retail of agricultural goods except for sales of nursery stock
23 grown by the seller and sold to a nursery dealer licensed under
24 section 9 of the insect pest and plant disease act, 1931 PA 189,
25 MCL 286.209.

26 (e) Except as provided in subsection (3), a farmers'
27 cooperative corporation organized within the limitations of section

1 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under
2 subdivision (c) because the corporation was exempt from federal
3 income taxes under section 521 of the internal revenue code and
4 that would continue to be exempt under section 521 of the internal
5 revenue code except for either of the following activities:

6 (i) The corporation's repurchase from nonproducer customers of
7 portions or components of commodities the corporation markets to
8 those nonproducer customers and the corporation's subsequent
9 manufacturing or marketing of the repurchased portions or
10 components of the commodities.

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

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

27 (i) Activities under the agricultural commodities marketing

1 act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural
2 marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726.

3 (ii) Dissemination of market information.

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

5 (iv) Promotion.

6 (v) Research relating to members' products.

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

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

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

20 (3) Except as otherwise provided in this section, a farmers'
21 cooperative corporation shall exclude from adjusted tax base the
22 revenue and expenses attributable to business transacted with
23 farmer or farmer cooperative corporation patrons to whom net
24 earnings are allocated in the form of patronage dividends as
25 defined in section 1388 of the internal revenue code.

26 (4) As used in subsection (1)(b), "exclusively" means that
27 term as applied for purposes of section 501(c)(3) of the internal

1 revenue code.

2 Sec. 24. (1) A taxpayer that meets the criteria under
3 subsection (4) and that is a qualified start-up business that does
4 not have business income for 2 consecutive tax years may claim a
5 credit against the tax imposed under this act for the second of
6 those 2 consecutive tax years and each immediately following
7 consecutive tax year in which the taxpayer does not have business
8 income equal to the taxpayer's tax liability for the tax year in
9 which the taxpayer has no business income. If the taxpayer has
10 business income in any tax year after the credit under this section
11 is claimed, the taxpayer shall claim the credit under this section
12 for any following tax year only if the taxpayer subsequently has no
13 business income for 2 consecutive tax years. The taxpayer may claim
14 the credit for the second of those 2 consecutive tax years and each
15 immediately following consecutive tax year in which the taxpayer
16 does not have business income.

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

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

24 (4) If a taxpayer that took the credit under this section has
25 no business activity in this state and has any business activity
26 outside of this state for any of the first 3 tax years after the
27 last tax year for which it took the credit under this section, the

1 taxpayer shall add to its tax liability the following amounts:

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

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

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

14 (5) A member of an affiliated group as defined in this act, a
15 controlled group of corporations as defined in section 1563 of the
16 internal revenue code and further described in 26 CFR 1.414(b)-1
17 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
18 defined by the internal revenue code shall determine number of
19 employees, sales, and business income for purposes of this section
20 on a consolidated basis.

21 (6) For the tax year for which a credit under this section is
22 claimed, compensation, directors' fees, or distributive shares paid
23 by the taxpayer to any 1 of the following shall not exceed
24 \$135,000.00:

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

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

1 partnership.

2 (c) A shareholder of an S corporation.

3 (d) A member of a limited liability corporation.

4 (e) An individual who is an owner.

5 (7) As used in this section:

6 (a) "Business income" means business income as defined in
7 section 3 excluding funds received from small business innovation
8 research grants and small business technology transfer programs
9 established under the small business innovation development act of
10 1982, Public Law 97-219, reauthorized under the small business
11 research and development enhancement act, Public Law 102-564, and
12 subsequently reauthorized under the small business reauthorization
13 act of 2000, Public Law 106-554.

14 (b) "Michigan economic development corporation" means the
15 public body corporate created under section 28 of article VII of
16 the state constitution of 1963 and the urban cooperation act of
17 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual
18 interlocal agreement effective April 5, 1999, as amended, between
19 local participating economic development corporations formed under
20 the economic development corporations act, 1974 PA 338, MCL
21 125.1601 to 125.1636, and the Michigan strategic fund.

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

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

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

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

4 (iv) Is not publicly traded.

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

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

11 (B) During the immediately preceding 7 years would have been
12 in 1 of the first 2 years of contribution liability under section
13 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1,
14 MCL 421.19, if the qualified start-up business had employees and
15 was liable under the Michigan employment security act, 1936 (Ex
16 Sess) PA 1, MCL 421.1 to 421.75.

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

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

25 Sec. 25. (1) The credit provided in this section shall be
26 taken before any other credit under this act and is available to
27 any person with gross receipts that do not exceed \$10,000,000.00

1 and with adjusted business income minus the loss adjustment that
2 does not exceed \$475,000.00, subject to the following:

3 (a) An individual, a partnership, or a subchapter S
4 corporation is disqualified if the individual, any 1 partner of the
5 partnership, or any 1 shareholder of the subchapter S corporation
6 receives more than \$115,000.00 as a distributive share of the
7 adjusted business income minus the loss adjustment of the
8 individual, the partnership, or the subchapter S corporation.

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

12 (i) Compensation and directors' fees of a shareholder or
13 officer exceed \$115,000.00.

14 (ii) The sum of the following amounts exceeds \$115,000.00:

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

16 (B) The product of the percentage of outstanding ownership or
17 of outstanding stock owned by that shareholder multiplied by the
18 difference between the sum of business income and, to the extent
19 deducted in determining federal taxable income, a carry back or a
20 carry over of a net operating loss or capital loss, minus the loss
21 adjustment.

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

26 (i) If an individual, any 1 partner of the partnership, or any
27 1 shareholder of the subchapter S corporation receives as a

1 distributive share of adjusted business income minus the loss
2 adjustment of the individual, partnership, or subchapter S
3 corporation; if compensation and directors' fees of a shareholder
4 or officer of a corporation other than a subchapter S corporation
5 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
6 is more than \$95,000.00 but less than \$100,000.00, the credit is
7 reduced by 20%.

8 (ii) If an individual, any 1 partner of the partnership, or any
9 1 shareholder of the subchapter S corporation receives as a
10 distributive share of adjusted business income minus the loss
11 adjustment of the individual, partnership, or subchapter S
12 corporation; if compensation and directors' fees of a shareholder
13 or officer of a corporation other than a subchapter S corporation
14 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
15 is \$100,000.00 or more but less than \$105,000.00, the credit is
16 reduced by 40%.

17 (iii) If an individual, any 1 partner of the partnership, or any
18 1 shareholder of the subchapter S corporation receives as a
19 distributive share of adjusted business income minus the loss
20 adjustment of the individual, partnership, or subchapter S
21 corporation; if compensation and directors' fees of a shareholder
22 or officer of a corporation other than a subchapter S corporation
23 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
24 is \$105,000.00 or more but less than \$110,000.00, the credit is
25 reduced by 60%.

26 (iv) If an individual, any 1 partner of the partnership, or any
27 1 shareholder of the subchapter S corporation receives as a

1 distributive share of adjusted business income minus the loss
2 adjustment of the individual, partnership, or subchapter S
3 corporation; if compensation and directors' fees of a shareholder
4 or officer of a corporation other than a subchapter S corporation
5 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
6 is \$110,000.00 or more but not in excess of \$115,000.00, the credit
7 is reduced by 80%.

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

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

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

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

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

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

27 (4) A person who qualifies under subsection (1) is allowed a

1 credit against the tax imposed under section 20. The credit under
2 this subsection is the amount by which the tax imposed under
3 section 20 exceeds 1.8% of adjusted business income.

4 (5) If gross receipts exceed \$9,000,000.00, the credit shall
5 be reduced by a fraction, the numerator of which is the amount of
6 gross receipts over \$9,000,000.00 and the denominator of which is
7 \$1,000,000.00. The credit shall not exceed 100% of the tax
8 liability imposed by section 20.

9 (6) An affiliated group as defined in this act, a controlled
10 group of corporations as defined in section 1563 of the internal
11 revenue code and further described in 26 CFR 1.414(b)-1 and
12 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
13 defined by the internal revenue code shall not take the credit
14 allowed by this section unless the business activities of the
15 entities are consolidated. The gross receipts, adjusted business
16 income, and tax base of all members of the group must be combined
17 to determine eligibility and to compute the credit under this
18 section. If any 1 individual, partner, officer, or shareholder has
19 compensation or a distributive share of adjusted business income,
20 or a combination of compensation and a distributive share of
21 adjusted business income, in excess of the amounts specified in
22 this section from any 1 member of the group, the group is not
23 eligible for the credit. Each member's business activities
24 attributable to its tax year or years ending within the calendar
25 year are required to be consolidated on a form prescribed by the
26 department.

27 (7) For a person that reports for a tax year less than 12

1 months, the amounts specified in this section for gross receipts,
2 adjusted business income, and share of business income shall be
3 multiplied by a fraction, the numerator of which is the number of
4 months in the tax year and the denominator of which is 12.

5 (8) The department shall permit a taxpayer that elects to
6 claim the credit allowed under this section based on the amount by
7 which the tax imposed under section 20 exceeds the percentage of
8 adjusted business income for the tax year as determined under
9 subsection (4), and that is not required to reduce the credit
10 pursuant to subsection (1) or (5), to file and pay the tax imposed
11 by this act without computing the tax imposed under section 20.

12 (9) If a professional employer organization does not make an
13 election under section 4(5) with each of its clients, the
14 professional employer organization shall not claim a credit under
15 this section. If a client does not make an election under section
16 4(5) with its professional employer organization, the client shall
17 not claim a credit under this section.

18 (10) As used in this section:

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

23 (b) "Adjusted business income" means business income as
24 defined in section 3 with all of the following adjustments:

25 (i) Add compensation and directors' fees of active shareholders
26 of a corporation.

27 (ii) Add, to the extent deducted in determining federal taxable

1 income, a carry back or a carry over of a net operating loss.

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

4 (iv) Add compensation and directors' fees of officers of a
5 corporation.

6 (c) "Loss adjustment" means the amount by which adjusted
7 business income was less than zero in any of the 5 tax years
8 immediately preceding the tax year for which eligibility for the
9 credit under this section is being determined. In determining the
10 loss adjustment for a tax year, a taxpayer is not required to use
11 more of the taxpayer's total negative adjusted business income than
12 the amount needed to qualify the taxpayer for the credit under this
13 section. A taxpayer shall not be considered to have used any
14 portion of the taxpayer's negative adjusted business income amount
15 unless the portion used is necessary to qualify for the credit
16 under this section. A taxpayer shall not reuse a negative adjusted
17 business income amount used as a loss adjustment in a previous tax
18 year or use a negative adjusted business income amount from a year
19 in which the taxpayer did not receive the credit under this
20 section.

21 (d) "Subchapter S corporation" means a corporation that elects
22 to be subject to taxation under subchapter S of chapter 1 of
23 subtitle A of the internal revenue code, 26 USC 1361 to 1379.

24 Sec. 26. (1) For tax years that begin after December 31, 2008,
25 a taxpayer that has been issued a tax voucher certificate under
26 section 23 of the Michigan early stage venture investment act of
27 2003, 2003 PA 296, MCL 125.2253, or any taxpayer to which all or a

1 portion of a tax voucher is transferred pursuant to the Michigan
2 early stage venture investment act of 2003, 2003 PA 296, MCL
3 125.2231 to 125.2263, may use the tax voucher to pay a liability of
4 the taxpayer due under this act.

5 (2) On and after November 21, 2005, the total amount of all
6 tax voucher certificates that shall be approved under this section,
7 section 37e of former 1975 PA 228, and the Michigan early stage
8 venture investment act of 2003, 2003 PA 296, MCL 125.2231 to
9 125.2263, shall not exceed an amount sufficient to allow the
10 Michigan early stage venture investment corporation to raise
11 \$450,000,000.00 for the purposes authorized under the Michigan
12 early stage venture investment act of 2003, 2003 PA 296, MCL
13 125.2231 to 125.2263. The total amount of all tax voucher
14 certificates under this section and section 37e of former 1975 PA
15 228 shall not exceed \$600,000,000.00.

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

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

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

1 125.2263.

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

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

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

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

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

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

25 (9) The department shall administer transfers of tax voucher
26 certificates or the transfer of the right to be issued and receive
27 a tax voucher certificate as provided in the Michigan early stage

1 venture investment act of 2003, 2003 PA 296, MCL 125.2231 to
2 125.2263, and shall take any action necessary to enforce and
3 effectuate the permissible issuance and use of tax voucher
4 certificates in a manner authorized under this section and the
5 Michigan early stage venture investment act of 2003, 2003 PA 296,
6 MCL 125.2231 to 125.2263.

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

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

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

25 (b) To pay any liability of the taxpayer under and to the
26 extent allowed under section 270 of the income tax act of 1967,
27 1967 PA 281, MCL 206.270.

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

4 (d) To be transferred to a person who may use the tax voucher
5 certificate to pay any liability under and to the extent allowed
6 under section 270 of the income tax act of 1967, 1967 PA 281, MCL
7 206.270.

8 (12) As used in this section:

9 (a) "Investor" means that term as defined in the Michigan
10 early stage venture investment act of 2003, 2003 PA 296, MCL
11 125.2231 to 125.2263.

12 (b) "Certificate" means the certificate issued under section
13 23 of the Michigan early stage venture investment act of 2003, 2003
14 PA 296, MCL 125.2253.

15 (c) "Transferee" means a taxpayer to whom a tax voucher
16 certificate has been transferred under section 23 of the Michigan
17 early stage venture investment act of 2003, 2003 PA 296, MCL
18 125.2253, and this section.

19 Sec. 27. (1) A taxpayer that is not subject to the income tax
20 act of 1967, 1967 PA 281, MCL 206.1 to 206.532, may claim a credit
21 against the tax imposed by this act, subject to the applicable
22 limitations under this section, equal to 50% of the aggregate
23 amount of charitable contributions made by the taxpayer during the
24 tax year to all of the following:

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

27 (b) A public library.

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

5 (d) The Michigan colleges foundation.

6 (2) The tax credit allowed under this section for a donation
7 under subsection (1)(c) is allowed only if the donee corporation,
8 fund, foundation, trust, or association is controlled or approved
9 and reviewed by the governing board of the institution of higher
10 learning that benefits from the charitable contributions. The
11 nonprofit corporation, fund, foundation, trust, or association
12 shall provide copies of its annual independently audited financial
13 statements to the auditor general of this state and chairpersons of
14 the appropriation committees of the senate and house or
15 representatives.

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

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

24 (5) As used in this section:

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

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

4 (ii) Regularly offers education above the twelfth grade.

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

9 (iv) Is recognized by the state board of education as an
10 institution of higher learning and appears as an institution of
11 higher learning in the annual publication of the department of
12 education entitled "the directory of institutions of higher
13 education".

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

16 Sec. 28. (1) A taxpayer that is an employer or carrier that is
17 subject to the worker's disability compensation act of 1969, 1969
18 PA 317, MCL 418.101 to 418.941, may claim a credit against the tax
19 imposed by this act an amount equal to the amount paid during that
20 tax year by the taxpayer pursuant to section 352 of the worker's
21 disability compensation act of 1969, 1969 PA 317, MCL 418.352, as
22 certified by the director of the bureau of worker's disability
23 compensation pursuant to section 391(6) of the worker's disability
24 compensation act of 1969, 1969 PA 317, MCL 418.391.

25 (2) A taxpayer that claims a credit under this section shall
26 claim a portion of the credit allowed by this section equal to the
27 payments made during a calendar quarter pursuant to section 352 of

1 the worker's disability compensation act of 1969, 1969 PA 317, MCL
2 418.352, against the estimated tax payments made under section 71.
3 Any subsequent increase or decrease in the amount claimed for
4 payments made by the insurer or self-insurer shall be reflected in
5 the amount of the credit taken for the calendar quarter in which
6 the amount of the adjustment is finalized.

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

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

13 Sec. 29. (1) Subject to the applicable limitations in this
14 section, a taxpayer that does not claim a credit under section 261
15 of the income tax act of 1967, 1967 PA 281, MCL 206.261, may claim
16 a credit against the tax imposed by this act equal to 50% of the
17 amount the taxpayer contributed during the tax year to an endowment
18 fund of a community foundation.

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

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

26 (4) A taxpayer may claim a credit under this section for
27 contributions to a community foundation made before the expiration

1 of the 18-month period after a community foundation was
2 incorporated or established during which the community foundation
3 must build an endowment value of \$100,000.00 as provided in
4 subsection (6)(g). If the community foundation does not reach the
5 required \$100,000.00 endowment value during that 18-month period,
6 contributions to the community foundation made after the date on
7 which the 18-month period expires shall not be used to calculate a
8 credit under this section. At any time after the expiration of the
9 18-month period under subsection (6)(g) that the community
10 foundation has an endowment value of \$100,000.00, the community
11 foundation may apply to the department for certification under this
12 section.

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

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

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

26 (b) Supports a broad range of charitable activities within the
27 specific geographic area of this state that it serves, such as a

1 municipality or county.

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

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

10 (e) Is not a supporting organization as an organization is
11 described in section 509(a)(3) of the internal revenue code and in
12 26 CFR 1.509(a)-4 and 1.509(a)-5.

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

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

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

24 (i) Provides evidence to the department that the community
25 foundation has, before the expiration of 6 months after the
26 community foundation is incorporated or established, and maintains
27 continually during the tax year for which the credit under this

1 section is claimed, at least 1 part-time or full-time employee.

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

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

16 Sec. 30. (1) A taxpayer who does not claim a credit under
17 section 261 of the income tax act of 1967, 1967 PA 281, MCL
18 206.261, for a contribution to a shelter for homeless persons, food
19 kitchen, food bank, or other entity, the primary purpose of which
20 is to provide overnight accommodation, food, or meals to persons
21 who are indigent, may claim a credit against the tax imposed by
22 this act equal to 50% of the cash amount the taxpayer contributed
23 during the tax year to a shelter for homeless persons, food
24 kitchen, food bank, or other entity, the primary purpose of which
25 is to provide overnight accommodation, food, or meals to persons
26 who are indigent, if a contribution to that entity is tax
27 deductible for the donor under the internal revenue code.

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

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

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

13 (5) On or before July 1 of each year, the department shall
14 report to the house of representatives committee on tax policy and
15 the senate committee on finance the total amount of tax credits
16 claimed under this section, section 29, and section 261 of the
17 income tax act of 1967, 1967 PA 281, MCL 206.261, for the
18 immediately preceding tax year.

19 Sec. 31. (1) A taxpayer may claim a credit against the tax
20 imposed by this act for 1 or more of the following as applicable:

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

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

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

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

5 (b) Ten percent of the amount by which the taxpayer's adjusted
6 qualified business activity performed in this state outside of a
7 renaissance zone for the tax year exceeds the taxpayer's adjusted
8 qualified business activity performed in this state outside of a
9 renaissance zone for the 2001 tax year under section 39e of former
10 1975 PA 228.

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

16 (4) An affiliated group as defined in this act, a controlled
17 group of corporations as defined in section 1563 of the internal
18 revenue code and further described in 26 CFR 1.414(b)-1 and
19 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
20 defined by the internal revenue code shall not take the credit
21 allowed under subsection (2) unless the qualified business activity
22 of the group or entities is consolidated.

23 (5) A taxpayer that claims a credit under subsection (2) shall
24 attach a copy of each of the following as issued pursuant to the
25 Michigan next energy authority act, 2002 PA 593, MCL 207.821 to
26 207.827, to the annual return required under this act for each tax
27 year in which the taxpayer claims the credit allowed under

1 subsection (2):

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

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

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

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

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

15 (8) As used in this section:

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

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

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

25 (A) Business income.

26 (B) The apportionment factor as determined under chapter 3.

27 (C) The alternative energy business activity factor.

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

11 (c) "Alternative energy marine propulsion system",
12 "alternative energy system", "alternative energy vehicle", and
13 "alternative energy technology" mean those terms as defined in the
14 Michigan next energy authority act, 2002 PA 593, MCL 207.821 to
15 207.827.

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

20 (e) "Baseline tax liability attributable to qualified business
21 activity" means the taxpayer's tax liability for the 2001 tax year
22 under former 1975 PA 228 multiplied by the taxpayer's alternative
23 energy business activity factor for the 2001 tax year under former
24 1975 PA 228. A taxpayer with a 2001 tax year of less than 12 months
25 under former 1975 PA 228 shall annualize the amount calculated
26 under this subdivision as necessary to determine baseline tax
27 liability attributable to qualified business activity that reflects

1 a 12-month period.

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

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

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

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

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

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

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

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

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

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

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

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

19 Sec. 32. (1) For a period of time not to exceed 20 years as
20 determined by the Michigan economic growth authority, a taxpayer
21 that is an authorized business or an eligible taxpayer may claim a
22 credit against the tax imposed by section 20 equal to the amount
23 certified each year by the Michigan economic growth authority as
24 follows:

25 (a) For an authorized business for the tax year, an amount not
26 to exceed the payroll of the authorized business attributable to
27 employees who perform qualified new jobs as determined under the

1 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
2 207.810, multiplied by the tax rate.

3 (b) For an eligible business as determined under section
4 8(5)(a) of the Michigan economic growth authority act, 1995 PA 24,
5 MCL 207.808, an amount not to exceed 50% of the payroll of the
6 eligible taxpayer attributable to employees who perform retained
7 jobs as determined under the Michigan economic growth authority
8 act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate
9 for the tax year.

10 (c) For an eligible business as determined under section
11 8(5)(b) of the Michigan economic growth authority act, 1995 PA 24,
12 MCL 207.808, an amount not to exceed the payroll of the eligible
13 taxpayer attributable to employees who perform retained jobs as
14 determined under the Michigan economic growth authority act, 1995
15 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate for the
16 tax year.

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

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

24 (a) The taxpayer is an authorized business or an eligible
25 taxpayer.

26 (b) The amount of the credit under this section for the
27 authorized business or eligible taxpayer for the designated tax

1 year.

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

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

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

16 (6) A taxpayer that claims a credit under subsection (1)(a),
17 section 33(a), or section 37c or 37d of former 1975 PA 228, that
18 has an agreement with the Michigan economic growth authority based
19 on qualified new jobs as defined in section 3(n)(ii) of the
20 Michigan economic growth authority act, 1995 PA 24, MCL 207.803,
21 and that removes from this state 51% or more of those qualified new
22 jobs within 3 years after the first year in which the taxpayer
23 claims a credit described in this subsection shall pay to the
24 department no later than 12 months after those qualified new jobs
25 are removed from the state an amount equal to the total of all
26 credits described in this subsection that were claimed by the
27 taxpayer.

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

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

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

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

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

24 (10) As used in this section:

25 (a) "Authorized business", "facility", "full-time job",
26 "qualified high-technology business", and "written agreement" mean
27 those terms as defined in the Michigan economic growth authority

1 act, 1995 PA 24, MCL 207.801 to 207.810.

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

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

8 (d) "Payroll" means the total salaries and wages before
9 deducting any personal or dependency exemptions.

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

11 (i) The average number of full-time jobs at a facility of an
12 authorized business for a tax year in excess of the average number
13 of full-time jobs the authorized business maintained in this state
14 prior to the expansion or location as that is determined under the
15 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
16 207.810.

17 (ii) The average number of full-time jobs at a facility created
18 by an eligible business within 120 days before becoming an
19 authorized business that is in excess of the average number of
20 full-time jobs that the business maintained in this state 120 days
21 before becoming an authorized business, as determined under the
22 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
23 207.810.

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

1 Sec. 33. (1) A taxpayer that is a business located and
2 conducting business activity within a renaissance zone may claim a
3 credit against the tax imposed by this act for the tax year to the
4 extent and for the duration provided pursuant to the Michigan
5 renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, equal
6 to the lesser of the following:

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

9 (b) Ten percent of adjusted services performed in a designated
10 renaissance zone.

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

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

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

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

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

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

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

5 (5) A taxpayer that claims a credit under this section shall
6 not employ, pay a speaker fee to, or provide any remuneration,
7 compensation, or consideration to any person employed by the state,
8 the state administrative board created in 1921 PA 2, MCL 17.1 to
9 17.3, or the renaissance zone review board created in 1996 PA 376,
10 MCL 125.2681 to 125.2696, whose employment relates or related in
11 any way to the authorization or enforcement of the credit allowed
12 under this section for any year in which the taxpayer claims a
13 credit under this section and for the 3 years after the last year
14 that a credit is claimed.

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

18 (7) Any portion of the taxpayer's tax liability that is
19 attributable to business activity related to the operation of a
20 casino, and business activity that is associated or affiliated with
21 the operation of a casino, including, but not limited to, the
22 operation of a parking lot, hotel, motel, or retail store, shall
23 not be used to calculate a credit under this section.

24 (8) As used in this section:

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

27 (i) Except as provided in subparagraph (ii), the sum of the

1 taxpayer's payroll for services performed in a designated
2 renaissance zone plus an amount equal to the amount deducted in
3 arriving at federal taxable income for the tax year for
4 depreciation, amortization, or immediate or accelerated write-off
5 for tangible property exempt under section 7ff of the general
6 property tax act, 1893 PA 206, MCL 211.7ff, in the tax year or, for
7 new property, in the immediately following tax year.

8 (ii) For a partnership, limited liability company, S
9 corporation, or individual, the amount determined under
10 subparagraph (i) plus the product of the following as related to the
11 taxpayer if greater than zero:

12 (A) Business income.

13 (B) The ratio of the taxpayer's total sales in this state
14 during the tax year divided by the taxpayer's total sales
15 everywhere during the tax year.

16 (C) The renaissance zone business activity factor.

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

20 (c) "New property" means property that has not been subject
21 to, or exempt from, the collection of taxes under the general
22 property tax act, 1893 PA 206, MCL 211.1 to 211.157, and has not
23 been subject to, or exempt from, ad valorem property taxes levied
24 in another state, except that receiving an exemption as inventory
25 property does not disqualify property.

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

1 (e) "Renaissance zone" means that term as defined in the
2 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
3 125.2696.

4 (f) "Renaissance zone business activity factor" means a
5 fraction, the numerator of which is the ratio of the average value
6 of the taxpayer's property located in a designated renaissance zone
7 to the average value of the taxpayer's property in this state plus
8 the ratio of the taxpayer's payroll for services performed in a
9 designated renaissance zone to all of the taxpayer's payroll in
10 this state and the denominator of which is 2.

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

14 Sec. 34. (1) A qualified taxpayer with a rehabilitation plan
15 certified after December 31, 2007 or a qualified taxpayer that has
16 a rehabilitation plan certified before January 1, 2008 under
17 section 39c of former 1975 PA 228 for the rehabilitation of a
18 historic resource for which a certification of completed
19 rehabilitation has been issued after the end of the taxpayer's last
20 tax year may credit against the tax imposed by this act the amount
21 determined pursuant to subsection (2) for the qualified
22 expenditures for the rehabilitation of a historic resource pursuant
23 to the rehabilitation plan in the year in which the certification
24 of completed rehabilitation of the historic resource is issued
25 provided that the certification of completed rehabilitation was
26 issued not more than 5 years after the rehabilitation plan was
27 certified by the Michigan historical center.

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

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

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

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

27 (a) All of the following criteria:

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

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

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

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

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

24 (5) The center may inspect a historic resource at any time
25 during the rehabilitation process and may revoke certification of
26 completed rehabilitation if the rehabilitation was not undertaken
27 as represented in the rehabilitation plan or if unapproved

1 alterations to the completed rehabilitation are made during the 5
2 years after the tax year in which the credit was claimed. The
3 center shall promptly notify the department of a revocation.

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

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

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

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

16 (iii) A contributing resource located within a historic district
17 designated by a local unit pursuant to an ordinance adopted under
18 the local historic districts act, 1970 PA 169, MCL 399.201 to
19 399.215.

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

23 (i) The historic resource is located in a designated historic
24 district in a local unit of government with an existing ordinance
25 under the local historic districts act, 1970 PA 169, MCL 399.201 to
26 399.215.

27 (ii) The historic resource is located in an incorporated local

1 unit of government that does not have an ordinance under the local
2 historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and
3 has a population of less than 5,000.

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

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

11 (7) If a qualified taxpayer is a partnership, limited
12 liability company, or subchapter S corporation, the qualified
13 taxpayer may assign all or any portion of a credit allowed under
14 this section to its partners, members, or shareholders, based on
15 the partner's, member's, or shareholder's proportionate share of
16 ownership or based on an alternative method approved by the
17 department. A credit assignment under this subsection is
18 irrevocable and shall be made in the tax year in which a
19 certificate of completed rehabilitation is issued. A qualified
20 taxpayer may claim a portion of a credit and assign the remaining
21 credit amount. A partner, member, or shareholder that is an
22 assignee shall not subsequently assign a credit or any portion of a
23 credit assigned to the partner, member, or shareholder under this
24 subsection. A credit amount assigned under this subsection may be
25 claimed against the partner's, member's, or shareholder's tax
26 liability under this act or under the income tax act of 1967, 1967
27 PA 281, MCL 206.1 to 206.532. A credit assignment under this

1 subsection shall be made on a form prescribed by the department.
2 The qualified taxpayer and assignees shall send a copy of the
3 completed assignment form to the department in the tax year in
4 which the assignment is made and attach a copy of the completed
5 assignment form to the annual return required to be filed under
6 this act for that tax year.

7 (8) If the credit allowed under this section for the tax year
8 and any unused carryforward of the credit allowed by this section
9 exceed the taxpayer's tax liability for the tax year, that portion
10 that exceeds the tax liability for the tax year shall not be
11 refunded but may be carried forward to offset tax liability in
12 subsequent tax years for 10 years or until used up, whichever
13 occurs first. An unused carryforward of a credit under section 39c
14 of former 1975 PA 228 that was unused at the end of the last tax
15 year for which former 1975 PA 228 was in effect may be claimed
16 against the tax imposed under section 20 for the years the
17 carryforward would have been available under section 39c of former
18 1975 PA 228.

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

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

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

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

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

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

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

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

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

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

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

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

27 (e) If the revocation is at least 4 years but less than 5

1 years after the year in which the credit was claimed, 20%.

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

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

8 (12) The qualified taxpayer shall attach all of the following
9 to the qualified taxpayer's annual return required under this act
10 or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to
11 206.532, if applicable, on which the credit is claimed:

12 (a) Certification of completed rehabilitation.

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

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

20 (13) The department of history, arts, and libraries shall
21 promulgate rules to implement this section pursuant to the
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
23 24.328.

24 (14) The total of the credits claimed under this section and
25 section 266 of the income tax act of 1967, 1967 PA 281, MCL
26 206.266, for a rehabilitation project shall not exceed 25% of the
27 total qualified expenditures eligible for the credit under this

1 section for that rehabilitation project.

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

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

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

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

11 (16) As used in this section:

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

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

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

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

1 located within the property boundaries of that personal residence.

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

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

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

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

14 (d) "Last tax year" means the taxpayer's tax year under former
15 1975 PA 228 that begins after December 31, 2006 and before January
16 1, 2008.

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

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

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

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

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

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

20 (k) "Qualified taxpayer" means a person that is an assignee
21 under subsection (7) or either owns the resource to be
22 rehabilitated or has a long-term lease agreement with the owner of
23 the historic resource and that has qualified expenditures for the
24 rehabilitation of the historic resource equal to or greater than
25 10% of the state equalized valuation of the property. If the
26 historic resource to be rehabilitated is a portion of a historic or
27 nonhistoric resource, the state equalized valuation of only that

1 portion of the property shall be used for purposes of this
2 subdivision. If the assessor for the local tax collecting unit in
3 which the historic resource is located determines the state
4 equalized valuation of that portion, that assessor's determination
5 shall be used for purposes of this subdivision. If the assessor
6 does not determine that state equalized valuation of that portion,
7 qualified expenditures, for purposes of this subdivision, shall be
8 equal to or greater than 5% of the appraised value as determined by
9 a certified appraiser. If the historic resource to be rehabilitated
10 does not have a state equalized valuation, qualified expenditures
11 for purposes of this subdivision shall be equal to or greater than
12 5% of the appraised value of the resource as determined by a
13 certified appraiser.

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

18 Sec. 35. (1) Subject to the criteria under this section, a
19 qualified taxpayer that has unused credits or has a preapproval
20 letter issued after December 31, 2007 and before January 1, 2013,
21 or a taxpayer that received a preapproval letter prior to January
22 1, 2008 under section 38g of former 1975 PA 228 and has not
23 received a certificate of completion prior to the taxpayer's last
24 tax year, provided that the project is completed not more than 5
25 years after the preapproval letter for the project is issued, or an
26 assignee under subsection (20), (21), or (22) may claim a credit
27 that has been approved under subsection (2), (3), or (4) against

1 the tax imposed by this act equal to either of the following:

2 (a) If the total of all credits for a project is \$1,000,000.00
3 or less, 10% of the cost of the qualified taxpayer's eligible
4 investment paid or accrued by the qualified taxpayer on an eligible
5 property provided that the project does not exceed the amount
6 stated in the preapproval letter. If eligible investment exceeds
7 the amount of eligible investment in the preapproval letter for
8 that project, the total of all credits for the project shall not
9 exceed the total of all credits on the certificate of completion.

10 (b) If the total of all credits for a project is more than
11 \$1,000,000.00 but \$30,000,000.00 or less and, except as provided in
12 subsection (6)(b), the project is located in a qualified local
13 governmental unit, a percentage as determined by the Michigan
14 economic growth authority not to exceed 10% of the cost of the
15 qualified taxpayer's eligible investment as determined under
16 subsection (9) paid or accrued by the qualified taxpayer on an
17 eligible property. If eligible investment exceeds the amount of
18 eligible investment in the preapproval letter for that project, the
19 total of all credits for the project shall not exceed the total of
20 all credits on the certificate of completion.

21 (2) If the cost of a project will be \$2,000,000.00 or less, a
22 qualified taxpayer shall apply to the Michigan economic growth
23 authority for approval of the project under this subsection. An
24 application under this subsection shall state whether the project
25 is a multiphase project. The chairperson of the Michigan economic
26 growth authority or his or her designee is authorized to approve an
27 application or project under this subsection. Only the chairperson

1 of the Michigan economic growth authority is authorized to deny an
2 application or project under this subsection. A project shall be
3 approved or denied not more than 45 days after receipt of the
4 application. If the chairperson of the Michigan economic growth
5 authority or his or her designee does not approve or deny the
6 application within 45 days after the application is received by the
7 Michigan economic growth authority, the application is considered
8 approved as written. The total of all credits for all projects
9 approved under this subsection shall not exceed \$10,000,000.00 in
10 any calendar year. If the chairperson of the Michigan economic
11 growth authority or his or her designee approves a project under
12 this subsection, the chairperson of the Michigan economic growth
13 authority or his or her designee shall issue a preapproval letter
14 that states that the taxpayer is a qualified taxpayer; the maximum
15 total eligible investment for the project on which credits may be
16 claimed and the maximum total of all credits for the project when
17 the project is completed and a certificate of completion is issued;
18 and the project number assigned by the Michigan economic growth
19 authority. If a project is denied under this subsection, a taxpayer
20 is not prohibited from subsequently applying under this subsection
21 for the same project or for another project. If the authority
22 approves a total of all credits for all projects under this
23 subsection of less than \$10,000,000.00 in a calendar year, the
24 authority may carry forward for 1 year only the difference between
25 \$10,000,000.00 and the total of all credits for all projects under
26 this subsection approved in the immediately preceding calendar
27 year. The Michigan economic growth authority shall develop and

1 implement the use of the application form to be used for projects
2 under this subsection. Before the Michigan economic growth
3 authority substantially changes the form, the Michigan economic
4 growth authority shall adopt the changes by resolution and give
5 notice of the proposed resolution to the secretary of the senate,
6 to the clerk of the house of representatives, and to each person
7 who requested from the Michigan economic growth authority in
8 writing or electronically to be notified regarding proposed
9 resolutions. The notice and proposed resolution and all attachments
10 shall be published on the Michigan economic growth authority's
11 internet website. The Michigan economic growth authority shall hold
12 a public hearing not sooner than 14 days and not later than 30 days
13 after the date notice of a proposed resolution is given and offer
14 an opportunity for persons to present data, views, questions, and
15 arguments. The Michigan economic growth authority board members or
16 1 or more persons designated by the Michigan economic growth
17 authority who have knowledge of the subject matter of the proposed
18 resolution shall be present at the public hearing and shall
19 participate in the discussion of the proposed resolution. The
20 Michigan economic growth authority may act on the proposed
21 resolution no sooner than 14 days after the public hearing. The
22 Michigan economic growth authority shall produce a final decision
23 document that describes the basis for its decision. The final
24 resolution and all attachments and the decision document shall be
25 provided to the secretary of the senate and to the clerk of the
26 house of representatives and shall be published on the Michigan
27 economic growth authority's internet website. The notice shall

1 include all of the following:

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

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

5 (c) The address to which written comments may be sent and the
6 date by which comments must be mailed or electronically
7 transmitted, which date shall not be restricted to only before the
8 date of the public hearing.

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

10 (3) If the cost of a project will be for more than
11 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer
12 shall apply to the Michigan economic growth authority for approval
13 of the project under this subsection. An application under this
14 subsection shall state whether the project is a multiphase project.
15 The chairperson of the Michigan economic growth authority or his or
16 her designee is authorized to approve an application or project
17 under this subsection. Only the chairperson of the Michigan
18 economic growth authority is authorized to deny an application or
19 project under this subsection. A project shall be approved or
20 denied not more than 45 days after receipt of the application. If
21 the chairperson of the Michigan economic growth authority or his or
22 her designee does not approve or deny an application within 45 days
23 after the application is received by the Michigan economic growth
24 authority, the application is considered approved as written. The
25 total of all credits for all projects approved under this
26 subsection shall not exceed \$30,000,000.00 in any calendar year. If
27 the authority approves a total of all credits for all projects

1 under this subsection of less than \$30,000,000.00 in a calendar
2 year, the authority may carry forward for 1 year only the
3 difference between \$30,000,000.00 and the total of all credits for
4 all projects approved under this subsection in the immediately
5 preceding calendar year. The criteria in subsection (7) shall be
6 used when approving projects under this subsection. When approving
7 projects under this subsection, priority shall be given to projects
8 on a facility. The total of all credits for an approved project
9 under this subsection shall not exceed \$1,000,000.00. A taxpayer
10 may apply under this subsection instead of subsection (4) for
11 approval of a project that will be for more than \$10,000,000.00,
12 but the total of all credits for that project shall not exceed
13 \$1,000,000.00. If the chairperson of the Michigan economic growth
14 authority or his or her designee approves a project under this
15 subsection, the chairperson of the Michigan economic growth
16 authority or his or her designee shall issue a preapproval letter
17 that states that the taxpayer is a qualified taxpayer; the maximum
18 total eligible investment for the project on which credits may be
19 claimed and the maximum total of all credits for the project when
20 the project is completed and a certificate of completion is issued;
21 and the project number assigned by the Michigan economic growth
22 authority. If a project is denied under this subsection, a taxpayer
23 is not prohibited from subsequently applying under this subsection
24 or subsection (4) for the same project or for another project.

25 (4) If the cost of a project will be for more than
26 \$10,000,000.00 and, except as provided in subsection (6)(b), the
27 project is located in a qualified local governmental unit, a

1 qualified taxpayer shall apply to the Michigan economic growth
2 authority for approval of the project. An application under this
3 subsection shall state whether the project is a multiphase project.
4 The Michigan economic growth authority shall approve or deny the
5 project not more than 65 days after receipt of the application. A
6 project under this subsection shall not be approved without the
7 concurrence of the state treasurer. If the Michigan economic growth
8 authority does not approve or deny the application within 65 days
9 after it receives the application, the Michigan economic growth
10 authority shall send the application to the state treasurer. The
11 state treasurer shall approve or deny the application within 5 days
12 after receipt of the application. If the state treasurer does not
13 deny the application within 5 days after receipt of the
14 application, the application is considered approved. The Michigan
15 economic growth authority shall approve a limited number of
16 projects under this subsection during each calendar year as
17 provided in subsection (6). The Michigan economic growth authority
18 shall use the criteria in subsection (7) when approving projects
19 under this subsection, when determining the total amount of
20 eligible investment, and when determining the percentage of
21 eligible investment for the project to be used to calculate a
22 credit. The total of all credits for an approved project under this
23 subsection shall not exceed the amount designated in the
24 preapproval letter for that project. If the Michigan economic
25 growth authority approves a project under this subsection, the
26 Michigan economic growth authority shall issue a preapproval letter
27 that states that the taxpayer is a qualified taxpayer; the

1 percentage of eligible investment for the project determined by the
2 Michigan economic growth authority for purposes of subsection
3 (1)(b); the maximum total eligible investment for the project on
4 which credits may be claimed and the maximum total of all credits
5 for the project when the project is completed and a certificate of
6 completion is issued; and the project number assigned by the
7 Michigan economic growth authority. The Michigan economic growth
8 authority shall send a copy of the preapproval letter to the
9 department. If a project is denied under this subsection, a
10 taxpayer is not prohibited from subsequently applying under this
11 subsection or subsection (3) for the same project or for another
12 project.

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

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

21 (a) Of the 17 projects allowed under this subsection, the
22 total of all credits for each project may be more than
23 \$10,000,000.00 but \$30,000,000.00 or less for up to 2 projects.

24 (b) Of the 17 projects allowed under this subsection, up to 3
25 projects may be approved for projects that are not in a qualified
26 local governmental unit if the property is a facility for which
27 eligible activities are identified in a brownfield plan or, for 1

1 of the 3 projects, if the property is not a facility but is
2 functionally obsolete or blighted, property identified in a
3 brownfield plan. For purposes of this subdivision, a facility
4 includes a building or complex of buildings that was used by a
5 state or federal agency and that is no longer being used for the
6 purpose for which it was used by the state or federal agency.

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

9 (7) The Michigan economic growth authority shall review all
10 applications for projects under subsection (4) and, if an
11 application is approved, shall determine the maximum total of all
12 credits for that project. Before approving a project for which the
13 total of all credits will be more than \$10,000,000.00 but
14 \$30,000,000.00 or less only, the Michigan economic growth authority
15 shall determine that the project would not occur in this state
16 without the tax credit offered under subsection (4). The Michigan
17 economic growth authority shall consider the following criteria to
18 the extent reasonably applicable to the type of project proposed
19 when approving a project under subsection (4), and the chairperson
20 of the Michigan economic growth authority or his or her designee
21 shall consider the following criteria to the extent reasonably
22 applicable to the type of project proposed when approving a project
23 under subsection (2) or (3) or when considering an amendment to a
24 project under subsection (9):

25 (a) The overall benefit to the public.

26 (b) The extent of reuse of vacant buildings and redevelopment
27 of blighted property.

1 (c) Creation of jobs.

2 (d) Whether the eligible property is in an area of high
3 unemployment.

4 (e) The level and extent of contamination alleviated by the
5 qualified taxpayer's eligible activities to the extent known to the
6 qualified taxpayer.

7 (f) The level of private sector contribution.

8 (g) The cost gap that exists between the site and a similar
9 greenfield site as determined by the Michigan economic growth
10 authority.

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

13 (i) Whether the financial statements of the qualified taxpayer
14 indicate that it is financially sound and that the project is
15 economically sound.

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

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

25 (9) If, after a taxpayer's project has been approved and the
26 taxpayer has received a preapproval letter but before the project
27 is completed, the taxpayer determines that the project cannot be

1 completed as preapproved, the taxpayer may petition the Michigan
2 economic growth authority to amend the project. The total of
3 eligible investment for the project as amended shall not exceed the
4 amount allowed in the preapproval letter for that project.

5 (10) A project may be a multiphase project. If a project is a
6 multiphase project, when each component of the multiphase project
7 is completed, the taxpayer shall submit documentation that the
8 component is complete, an accounting of the cost of the component,
9 and the eligible investment for the component of each taxpayer
10 eligible for a credit for the project of which the component is a
11 part to the Michigan economic growth authority or the designee of
12 the Michigan economic growth authority, who shall verify that the
13 component is complete. When the completion of the component is
14 verified, a component completion certificate shall be issued to the
15 qualified taxpayer which shall state that the taxpayer is a
16 qualified taxpayer, the credit amount for the component, the
17 qualified taxpayer's federal employer identification number or the
18 Michigan treasury number assigned to the taxpayer, and the project
19 number. The taxpayer may assign all or part of the credit for a
20 multiphase project as provided in this section after a component
21 completion certificate for a component is issued. The qualified
22 taxpayer may transfer ownership of or lease the completed component
23 and assign a proportionate share of the credit for the entire
24 project to the qualified taxpayer that is the new owner or lessee.
25 A multiphase project shall not be divided into more than 20
26 components. A component is considered to be completed when a
27 certificate of occupancy has been issued by the local municipality

1 in which the project is located for all of the buildings or
2 facilities that comprise the completed component and a component
3 completion certificate is issued. A credit assigned based on a
4 multiphase project shall be claimed by the assignee in the tax year
5 in which the assignment is made. The total of all credits for a
6 multiphase project shall not exceed the amount stated in the
7 preapproval letter for the project under subsection (1). If all
8 components of a multiphase project are not completed by 10 years
9 after the date on which the preapproval letter for the project was
10 issued, the qualified taxpayer that received the preapproval letter
11 for the project shall pay to the state treasurer, as a penalty, an
12 amount equal to the sum of all credits claimed and assigned for all
13 components of the multiphase project and no credits based on that
14 multiphase project shall be claimed after that date by the
15 qualified taxpayer or any assignee of the qualified taxpayer. The
16 penalty under this subsection is subject to interest on the amount
17 of the credit claimed or assigned determined individually for each
18 component at the rate in section 23(2) of 1941 PA 122, MCL 205.23,
19 beginning on the date that the credit for that component was
20 claimed or assigned. As used in this subsection, "proportionate
21 share" means the same percentage of the total of all credits for
22 the project that the qualified investment for the completed
23 component is of the total qualified investment stated in the
24 preapproval letter for the entire project.

25 (11) When a project under this section is completed, the
26 taxpayer shall submit documentation that the project is completed,
27 an accounting of the cost of the project, the eligible investment

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

- 21 (a) That the taxpayer is a qualified taxpayer.
- 22 (b) The total cost of the project and the eligible investment
23 of each qualified taxpayer.
- 24 (c) Each qualified taxpayer's credit amount.
- 25 (d) The qualified taxpayer's federal employer identification
26 number or the Michigan treasury number assigned to the taxpayer.
- 27 (e) The project number.

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

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

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

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

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

27 (15) Each qualified taxpayer and assignee under subsection

1 (20), (21), or (22) that claims a credit under this section shall
2 attach a copy of the certificate of completion and, if the credit
3 was assigned, a copy of the assignment form provided for under this
4 section to the annual return filed under this act on which the
5 credit under this section is claimed. An assignee of a credit based
6 on a multiphase project shall attach a copy of the assignment form
7 provided for under this section and the component completion
8 certificate provided for in subsection (10) to the annual return
9 filed under this act on which the credit is claimed but is not
10 required to file a copy of a certificate of completion.

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

20 (17) The credits approved under this section shall be
21 calculated after application of all other credits allowed under
22 this act. The credits under this section shall be calculated before
23 the calculation of the credit under section 32.

24 (18) If the credit allowed under this section for the tax year
25 and any unused carryforward of the credit allowed under this
26 section exceed the qualified taxpayer's or assignee's tax liability
27 for the tax year, that portion that exceeds the tax liability for

1 the tax year shall not be refunded but may be carried forward to
2 offset tax liability in subsequent tax years for 10 years or until
3 used up, whichever occurs first. Except as otherwise provided in
4 this subsection, the maximum time allowed under the carryforward
5 provisions under this subsection begins with the tax year in which
6 the certificate of completion is issued to the qualified taxpayer.
7 If the qualified taxpayer assigns all or any portion of its credit
8 approved under this section, the maximum time allowed under the
9 carryforward provisions for an assignee begins to run with the tax
10 year in which the assignment is made and the assignee first claims
11 a credit, which shall be the same tax year. The maximum time
12 allowed under the carryforward provisions for an annual credit
13 amount for a credit allowed under subsection (4) begins to run in
14 the tax year for which the annual credit amount is designated on
15 the certificate of completion issued under this section. A credit
16 carryforward available under section 38g of former 1975 PA 228 that
17 is unused at the end of the last tax year may be claimed against
18 the tax imposed under act for the years the carryforward would have
19 been available under former 1975 PA 228.

20 (19) If a project or credit under this section is for the
21 addition of personal property, if the cost of that personal
22 property is used to calculate a credit under this section, and if
23 the personal property is sold or disposed of or transferred from
24 eligible property to any other location, the qualified taxpayer
25 that sold, disposed of, or transferred the personal property shall
26 add the same percentage as determined under subsection (1) of the
27 federal basis of the personal property used for determining gain or

1 loss as of the date of the sale, disposition, or transfer to the
2 qualified taxpayer's tax liability under this act after application
3 of all credits under this act for the tax year in which the sale,
4 disposition, or transfer occurs. If a qualified taxpayer has an
5 unused carryforward of a credit under this section, the amount
6 otherwise added under this subsection to the qualified taxpayer's
7 tax liability may instead be used to reduce the qualified
8 taxpayer's carryforward under subsection (18).

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

1 qualified taxpayer may claim a portion of a credit and assign the
2 remaining credit amount. Except as otherwise provided in this
3 subsection, if the qualified taxpayer both claims and assigns
4 portions of the credit, the qualified taxpayer shall claim the
5 portion it claims in the tax year in which the certificate of
6 completion is issued or, for a credit assigned and claimed for a
7 multiphase project before a certificate of completion is issued,
8 the taxpayer shall claim the credit in the year in which the credit
9 is assigned. If a qualified taxpayer assigns all or a portion of
10 the credit and the eligible property is leased to more than 1
11 taxpayer, the qualified taxpayer shall determine the amount of
12 credit assigned to each lessee. A lessee shall not subsequently
13 assign a credit or any portion of a credit assigned under this
14 subsection. A purchaser may subsequently assign a credit or any
15 portion of a credit assigned to the purchaser under this subsection
16 to a lessee of the eligible property. The credit assignment under
17 this subsection shall be made on a form prescribed by the Michigan
18 economic growth authority. The qualified taxpayer shall send a copy
19 of the completed assignment form to the Michigan economic growth
20 authority in the tax year in which the assignment is made. The
21 assignee shall attach a copy of the completed assignment form to
22 its annual return required to be filed under this act, for the tax
23 year in which the assignment is made and the assignee first claims
24 a credit, which shall be the same tax year. In addition to all
25 other procedures under this subsection, the following apply if the
26 total of all credits for a project is more than \$10,000,000.00 but
27 \$30,000,000.00 or less:

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

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

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

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

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

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

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

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

27 (c) More than 1 annual credit amount may be assigned to any 1

1 assignee and the qualified taxpayer may assign all or a portion of
2 each annual credit amount to any assignee.

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

5 (22) For projects approved under section 38g of former 1975 PA
6 228 for which a certificate of completion is issued on and after
7 January 1, 2006, a qualified taxpayer may assign all or a portion
8 of a credit allowed under section 38g(2), (3), or (33) of former
9 1975 PA 228 under this subsection. A credit assignment under this
10 subsection is irrevocable and, except for a credit assignment based
11 on a multiphase project, shall be made in the tax year in which a
12 certificate of completion is issued unless the assignee is an
13 unknown lessee. If a qualified taxpayer wishes to assign all or a
14 portion of its credit to a lessee but the lessee is unknown in the
15 tax year in which the certificate of completion is issued, the
16 qualified taxpayer may delay claiming and assigning the credit
17 until the first tax year in which the lessee is known. A qualified
18 taxpayer may claim a portion of a credit and assign the remaining
19 credit amount. If the qualified taxpayer both claims and assigns
20 portions of the credit, the qualified taxpayer shall claim the
21 portion it claims in the tax year in which a certificate of
22 completion is issued pursuant to section 38g of former 1975 PA 228.
23 An assignee may subsequently assign a credit or any portion of a
24 credit assigned under this subsection to 1 or more assignees. An
25 assignment under this subsection of a credit allowed under section
26 38g(2), (3), or (33) of former 1975 PA 228 shall not be made after
27 10 years after the first tax year in which that credit under

1 section 38g(2), (3), or (33) of former 1975 PA 228 may be claimed.
2 The credit assignment or a subsequent reassignment under this
3 subsection shall be made on a form prescribed by the Michigan
4 economic growth authority. The qualified taxpayer shall send a copy
5 of the completed assignment form to the Michigan economic growth
6 authority in the tax year in which an assignment or reassignment is
7 made. An assignee or subsequent reassignee shall attach a copy of
8 the completed assignment form to its annual return required under
9 this act, for the tax year in which the assignment or reassignment
10 is made and the assignee or reassignee first claims a credit, which
11 shall be the same tax year. A credit assignment based on a credit
12 for a component of a multiphase project that is completed before
13 January 1, 2006 shall be made under section 38g(18) of former 1975
14 PA 228. A credit assignment based on a credit for a component of a
15 multiphase project that is completed on or after January 1, 2006
16 may be made under this section. In addition to all other procedures
17 and requirements under this section, the following apply if the
18 total of all credits for a project is more than \$10,000,000.00 but
19 \$30,000,000.00 or less:

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

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

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

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

5 (24) The Michigan economic growth authority may certify a
6 credit under this section based on an agreement entered into prior
7 to January 1, 2008 pursuant to section 38g of former 1975 PA 228.
8 The number of years for which the credit under this subsection may
9 be claimed under this act shall equal the maximum number of years
10 designated in the agreement reduced by the number of years for
11 which a credit had been claimed under section 38g of former 1975 PA
12 228.

13 (25) An eligible taxpayer that claims a credit under this
14 section is not prohibited from claiming a credit under section 32.
15 However, the eligible taxpayer shall not claim a credit under this
16 section and section 32 based on the same costs.

17 (26) Eligible investment attributable or related to the
18 operation of a professional sports stadium, and eligible investment
19 that is associated or affiliated with the operation of a
20 professional sports stadium, including, but not limited to, the
21 operation of a parking lot or retail store, shall not be used as a
22 basis for a credit under this section. Professional sports stadium
23 does not include a professional sports stadium that will no longer
24 be used by a professional sports team on and after the date that an
25 application related to that professional sports stadium is filed
26 under this section.

27 (27) Eligible investment attributable or related to the

1 operation of a casino, and eligible investment that is associated
2 or affiliated with the operation of a casino, including, but not
3 limited to, the operation of a parking lot, hotel, motel, or retail
4 store, shall not be used as a basis for a credit under this
5 section. As used in this subsection, "casino" means a casino
6 regulated by this state pursuant to the Michigan gaming control and
7 revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226.

8 (28) Eligible investment attributable or related to the
9 construction of a new landfill or the expansion of an existing
10 landfill regulated under part 115 of the natural resources and
11 environmental protection act, 1994 PA 451, MCL 324.11501 to
12 324.11550, shall not be used as a basis for a credit under this
13 section.

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

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

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

23 (30) As used in this section:

24 (a) "Annual credit amount" means the maximum amount that a
25 qualified taxpayer is eligible to claim each tax year for a project
26 for which the total of all credits is more than \$10,000,000.00 but
27 \$30,000,000.00 or less, which shall be 10% of the qualified

1 taxpayer's credit amount approved under subsection (3).

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

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

9 (d) "Blighted", "brownfield plan", "eligible activities",
10 "facility", "functionally obsolete", "qualified local governmental
11 unit", and "response activity" mean those terms as defined in the
12 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
13 to 125.2672.

14 (e) "Eligible investment" means demolition, construction,
15 restoration, alteration, renovation, or improvement of buildings or
16 site improvements on eligible property and the addition of
17 machinery, equipment, and fixtures to eligible property after the
18 date that eligible activities on that eligible property have
19 started pursuant to a brownfield plan under the brownfield
20 redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672,
21 and after the date that the preapproval letter is issued, if the
22 costs of the eligible investment are not otherwise reimbursed to
23 the taxpayer or paid for on behalf of the taxpayer from any source
24 other than the taxpayer. The addition of leased machinery,
25 equipment, or fixtures to eligible property by a lessee of the
26 machinery, equipment, or fixtures is eligible investment if the
27 lease of the machinery, equipment, or fixtures has a minimum term

1 of 10 years or is for the expected useful life of the machinery,
2 equipment, or fixtures, and if the owner of the machinery,
3 equipment, or fixtures is not the qualified taxpayer with regard to
4 that machinery, equipment, or fixtures.

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

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

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

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

20 (I) Infrastructure improvements that directly benefit the
21 eligible property.

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

25 (III) Lead or asbestos abatement.

26 (IV) Site preparation that is not response activity under
27 section 20101 of the natural resources and environmental protection

1 act, 1994 PA 451, MCL 324.20101.

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

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

12 (iii) Eligible property includes, to the extent included in the
13 brownfield plan, personal property located on the eligible
14 property.

15 (iv) Eligible property does not include qualified agricultural
16 property exempt under section 7ee of the general property tax act,
17 1893 PA 206, MCL 211.7ee, from the tax levied by a local school
18 district for school operating purposes to the extent provided under
19 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

20 (g) "Last tax year" means the taxpayer's tax year under former
21 1975 PA 228 that begins after December 31, 2006 and before January
22 1, 2008.

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

26 (i) "Multiphase project" means a project approved under this
27 section that has more than 1 component, each of which can be

1 completed separately.

2 (j) "Personal property" means that term as defined in section
3 8 of the general property tax act, 1893 PA 206, MCL 211.8, except
4 that personal property does not include either of the following:

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

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

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

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

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

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

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

21 (i) Owns or leases eligible property.

22 (ii) Certifies that, except as otherwise provided in this
23 subparagraph, the department of environmental quality has not sued
24 or issued a unilateral order to the taxpayer pursuant to part 201
25 of the natural resources and environmental protection act, 1994 PA
26 451, MCL 324.20101 to 324.20142, to compel response activity on or
27 to the eligible property, or expended any state funds for response

1 activity on or to the eligible property and demanded reimbursement
2 for those expenditures from the qualified taxpayer. However, if the
3 taxpayer has completed all response activity required by part 201
4 of the natural resources and environmental protection act, 1994 PA
5 451, MCL 324.20101 to 324.20142, is in compliance with any deed
6 restriction or administrative or judicial order related to the
7 required response activity, and has reimbursed the state for all
8 costs incurred by the state related to the required response
9 activity, the taxpayer meets the criteria under this subparagraph.

10 Sec. 36. (1) A qualified taxpayer that makes an eligible
11 contribution in an eligible business may claim a credit against the
12 tax imposed by the act equal to 50% of the taxpayer's eligible
13 contribution, not to exceed \$500,000.00.

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

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

20 (i) The impact on both the qualified taxpayer and eligible
21 business.

22 (ii) The innovation impact on the technology sector.

23 (iii) The number of jobs created.

24 (b) A project and collaboration structure that includes:

25 (i) The structure of investment between the qualified taxpayer
26 and eligible business.

27 (ii) Technology development roles and responsibilities.

1 (iii) A commercialization plan, including intellectual property
2 structure.

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

5 (d) Other collaborators or interested and supportive
6 businesses.

7 (i) A financial summary.

8 (ii) Total eligible contribution by the qualified taxpayer.

9 (iii) In-kind services provided by the qualified taxpayer.

10 (iv) Other investors or service providers in the project.

11 (v) Total overall investment into the project.

12 (3) The authority shall develop criteria to competitively
13 review applications, including, but not limited to, criteria
14 related to all of the following:

15 (a) Economic impact in Michigan.

16 (b) Total cash investment by the qualified taxpayer.

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

18 (d) Other collaborators and services provided.

19 (e) Impact of technology development across specific and other
20 sectors.

21 (f) The commercialization plan and potential for
22 commercialization.

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

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

3 (a) The taxpayer is an eligible business.

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

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

10 (6) The authority shall not grant more than 25 credits under
11 this section for any 1 year, based on an application and a
12 competitive review criteria.

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

23 (8) As used in this section:

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

27 (b) "Eligible contribution" means the transfer of pecuniary

1 interest in the form of cash, for the purposes of research and
2 development and technology innovation. An eligible contribution
3 does not include contract research.

4 (c) "Eligible business" means a taxpayer engaged in research
5 and development that together with any affiliates employs fewer
6 than 50 full-time employees or has gross receipts of less than
7 \$10,000,000.00 and has no prior financial interest in the qualified
8 taxpayer and in which the qualified taxpayer has no prior financial
9 interest.

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

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

15 (ii) Has not received a credit under this section in the past
16 calendar year.

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

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

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

24 (iii) Original investigation for the advancement of scientific
25 or technological knowledge that will enhance the research capacity
26 of this state in a way that increases the ability to attract to or
27 develop companies, jobs, researchers, or students in this state.

1 Sec. 37. (1) A taxpayer, other than a taxpayer that is a
2 member of an affiliated group, a controlled group of corporations,
3 or an entity under common control, whose gross receipts allocated
4 or apportioned to this state are greater than \$350,000.00 but less
5 than \$700,000.00, may claim a credit against the tax imposed under
6 this act equal to the tax liability after the credit under section
7 25 and before all other credits multiplied by a fraction the
8 numerator of which is the difference between the taxpayer's
9 allocated or apportioned gross receipts and \$700,000.00 and the
10 denominator of which is \$350,000.00.

11 (2) A taxpayer that is a member of an affiliated group, a
12 controlled group of corporations, or an entity under common
13 control, whose gross receipts allocated or apportioned to this
14 state are greater than \$100,000.00 but less than \$200,000.00, may
15 claim a credit against the tax imposed under this act equal to the
16 tax liability after the credit under section 25 and before all
17 other credits multiplied by a fraction the numerator of which is
18 the difference between the taxpayer's allocated or apportioned
19 gross receipts and \$200,000.00 and the denominator of which is
20 \$200,000.00.

21 Sec 38. (1) A taxpayer that maintains a headquarters facility
22 in this state may claim a credit against the tax imposed by this
23 act equal to the aggregate amount of all credits calculated under
24 subsection (2).

25 (2) The credit under this section shall be calculated
26 individually for each headquarters staff employee as follows:

27 (a) If the annual wages subject to taxation for federal

1 medicare payments for a headquarters staff employee are greater
2 than the average annual wages subject to taxation for federal
3 medicare payments for employees who are not headquarters staff
4 employees, then subtract the amount of the average annual wages
5 subject to taxation for federal medicare payments for employees of
6 the taxpayer who are not headquarters staff employees from each
7 headquarters staff employee's annual wages subject to taxation for
8 federal medicare payments or \$200,000.00, whichever is less.

9 (b) Multiply the result of the calculation in subdivision (a)
10 by 0.10.

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

13 (4) As used in this section:

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

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

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

22 (d) "Headquarters facility" means the principal or central
23 administrative office of a multistate taxpayer where not fewer than
24 500 full-time headquarters staff employees are located and employed
25 and where the primary headquarters related functions and services
26 are performed. If 90% or more of a taxpayer's headquarters-related
27 functions and services are performed in this state, all sites in

1 this state where such activities are performed are deemed to be 1
2 headquarters facility.

3 (e) "Headquarters-related functions and services" means those
4 functions involving financial, personnel, administrative, legal,
5 planning, or similar business functions performed by headquarters
6 staff employees.

7 (f) "Headquarters staff employee" means a full-time executive,
8 administrative, or professional employee performing headquarters-
9 related functions and services.

10 (g) "Professional employee" means an employee whose primary
11 duties require knowledge of an advanced type in a field of science
12 or learning. Such knowledge is characterized by a prolonged course
13 of specialized study. A professional employee's work must be
14 original and creative in nature and cannot be standardized over a
15 specific period of time. The work must require consistent exercise
16 of discretion, and the employee must spend at least 80% of his or
17 her time performing work directly related to management policies
18 and centralized activities.

19 CHAPTER 3

20 Sec. 40. Except as otherwise provided in this chapter, the
21 entire tax base of the taxpayer whose business activities are
22 confined solely to this state shall be allocated to this state.

23 Sec. 42. All of the tax base, other than the tax base derived
24 principally from transportation or financial services or
25 specifically allocated, shall be apportioned to this state by
26 multiplying the tax base by the sales factor. However, a taxpayer
27 that has no sales within this state shall apportion the tax base

1 using the average of the payroll and property factors.

2 Sec. 43. (1) Except as provided in subsection (2), the
3 property factor is a fraction, the numerator of which is the
4 average value of the taxpayer's real and tangible personal property
5 owned or rented in this state during the tax year and the
6 denominator of which is the average value of all the taxpayer's
7 real and tangible personal property owned or rented during the tax
8 year.

9 (2) The property factor for a foreign person is a fraction,
10 the numerator of which is the average value of the taxpayer's real
11 and tangible personal property owned or rented in this state during
12 the tax year by the taxpayer and the denominator of which is the
13 average value of all the taxpayer's real and tangible personal
14 property owned or rented in the United States during the tax year.

15 (3) Property owned by the taxpayer is valued at its original
16 cost. Property rented by the taxpayer is valued at 8 times the net
17 annual rental rate. Net annual rental rate is the annual rental
18 rate paid by the taxpayer less any annual rental rate received by
19 the taxpayer from subrentals.

20 (4) The average value of property shall be determined by
21 averaging the values at the beginning and ending of the tax year,
22 except that the department may require the periodic averaging of
23 values during the tax year if doing that is reasonably required to
24 properly reflect the average value of the taxpayer's property.

25 Sec. 44. (1) Except as otherwise provided in subsection (2),
26 the payroll factor is a fraction, the numerator of which is the
27 total wages paid in this state during the tax year by the taxpayer

1 and the denominator of which is the total wages paid everywhere
2 during the tax year by the taxpayer. For the purposes of this
3 chapter only, "wages" means all wages, salaries, fees, bonuses, and
4 commissions paid in the tax year on behalf of or for the benefit of
5 employees, officers, or directors of the taxpayer and includes, but
6 is not limited to, payments that are subject to or specifically
7 exempt or excepted from withholding under sections 3401 to 3406 of
8 the internal revenue code.

9 (2) The payroll factor for a foreign person is a fraction, the
10 numerator of which is the total wages paid for services performed
11 in this state during the tax year by the taxpayer and the
12 denominator of which is the total wages paid for services performed
13 in the United States during the tax year by the taxpayer.

14 (3) Wages are considered paid in this state in the following
15 circumstances:

16 (a) The individual's service is performed entirely within the
17 state.

18 (b) The individual's service is performed both within and
19 without the state, but the service performed without the state is
20 incidental to the individual's service within the state.

21 (c) Some of the individual's service is performed in the state
22 and the base of operations or, if there is no base of operations,
23 the place from which the service is directed or controlled is in
24 the state; or the base of operations or the place from which the
25 service is directed or controlled is not in any state in which some
26 part of the service is performed, but the individual's residence is
27 in this state.

1 Sec. 45. (1) Except as otherwise provided in subsection (2)
2 and section 46, the sales factor is a fraction, the numerator of
3 which is the total sales of the taxpayer in this state during the
4 tax year and the denominator of which is the total sales of the
5 taxpayer everywhere during the tax year.

6 (2) The sales factor for a foreign person is a fraction, the
7 numerator of which is the total sales of the taxpayer in this state
8 during the tax year and the denominator of which is the total sales
9 of the taxpayer in the United States during the tax year.

10 (3) Sales of tangible personal property are in this state if
11 the property is shipped or delivered to any purchaser within this
12 state regardless of the free on board point or other conditions of
13 the sales and if personal property is shipped from an office,
14 store, warehouse, factory, or other place of storage in this state
15 and the taxpayer is not taxable in the state of the purchaser. For
16 the purposes of this subsection only, "state" means any state of
17 the United States, the District of Columbia, the Commonwealth of
18 Puerto Rico, any territory or possession of the United States, or a
19 political subdivision thereof.

20 (4) Sales in this state also include the receipts from the
21 sale, lease, rental, or licensing of real property located in this
22 state and the lease, rental, or licensing of tangible personal
23 property located in this state.

24 (5) Royalties and other income received for the use of or for
25 the privilege of using intangible property, including patents,
26 know-how, formulas, designs, processes, patterns, copyrights, trade
27 names, service names, franchises, licenses, contracts, customer

1 lists, or similar items, are attributed to the state in which the
2 property is used by the purchaser. If the property is used in more
3 than 1 state, the royalties or other income shall be apportioned to
4 this state pro rata according to the portion of use in this state.
5 If the portion of use in this state cannot be determined, the
6 royalties or other income shall be excluded from both the numerator
7 and the denominator. Intangible property is used in this state if
8 the purchaser uses the intangible property or the rights to the
9 intangible property in the regular course of its business
10 operations in this state, regardless of the location of the
11 purchaser's customers.

12 (6) Sales, other than sales of tangible personal property, are
13 in this state in any of the following circumstances:

14 (a) The business activity is performed in this state.

15 (b) The business activity is performed both within and outside
16 of this state and, based on costs of performance, a greater
17 proportion of the business activity is performed within this state
18 than is performed outside this state.

19 (c) The business activity is planning, designing, or otherwise
20 facilitating construction activities within this state.

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

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

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

1 the real property is located within this state.

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

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

7 (9) For purposes of subsection (7), "mortgage company" means a
8 person who has greater than 70% of its revenues, in the ordinary
9 course of business, from the origination, sale, or servicing of
10 residential mortgage loans.

11 Sec. 46. (1) Notwithstanding section 45, a spun off
12 corporation that qualified to calculate its sales factor for 7
13 years under section 54 of former 1975 PA 228 may elect to calculate
14 its sales factor under this section for an additional 4 years
15 following those 7 years or 3 years if a taxpayer had an election
16 approved under section 54(1)(e) of former 1975 PA 228. Prior to the
17 end of the first year following the 7 years for which the taxpayer
18 qualified under section 54 of former 1975 PA 228 and if the spun
19 off corporation is not required to file amended returns under
20 section 54(5) of former 1975 PA 228, the spun off corporation may
21 request, in writing, approval from the state treasurer for the
22 election of the 4 additional years under this section. If the
23 taxpayer had an election approved under section 54(1)(e) of former
24 1978 PA 228, the taxpayer is not required to seek approval under
25 this section. The state treasurer must approve the election under
26 this subsection if the requirements of this section are met. The
27 request shall include all of the following:

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

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

6 (c) A commitment by the spun off corporation to invest at
7 least an additional \$200,000,000.00 of capital investment in this
8 state within the additional 4 years and maintain at least 80% of
9 the number of full-time equivalent employees in this state based on
10 the number of full-time equivalent employees in this state at the
11 beginning of the additional 4-year period for all of the additional
12 4 years; a commitment by the spun off corporation to invest an
13 additional \$400,000,000.00 in this state within the additional 4
14 years; or a commitment by the spun off corporation to invest a
15 total of \$1,300,000,000.00 in this state within the 11-year period
16 beginning with the year in which the restructuring transaction
17 under which a spun off corporation qualified under this subsection
18 was completed. The 4 years under this subdivision begins with the
19 eighth year following the tax year in which the restructuring
20 transaction under which a spun off corporation qualified under this
21 subsection was completed. For purposes of this subdivision, the
22 number of full-time equivalent employees includes employees in all
23 of the following circumstances:

24 (i) On temporary layoff.

25 (ii) On strike.

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

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

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

6 (2) Prior to the end of the eleventh year following the
7 restructuring transaction under which a spun off corporation
8 qualified under subsection (1), a taxpayer that is a buyer of a
9 plant located in this state that was included in the initial
10 restructuring transaction under subsection (1) may elect to
11 calculate its sales factor under subsection (3) and disregard sales
12 by the taxpayer attributable to that plant to a former parent of a
13 spun off corporation and the sales attributable to the plant shall
14 be treated as sales by a spun off corporation. This election shall
15 extend for a period of 4 years following the date that the plant
16 was purchased reduced by the number of years for which the taxpayer
17 calculated its sales factor pursuant to section 54(2) of former
18 1975 PA 228. On or before the due date for filing the buyer's first
19 annual return under this act following the purchase of the plant,
20 the buyer shall request, in writing, approval from the state
21 treasurer for the election provided under this section and shall
22 attach a statement that the buyer qualifies for the election under
23 this section.

24 (3) A spun off corporation qualified under subsection (1) or
25 (2) that makes an election and is approved under subsection (1) or
26 (2) calculates its sales factor under section 45 subject to both of
27 the following:

1 (a) A purchaser in this state under section 45 does not
2 include a person that purchases from a seller that was included in
3 the purchaser's combined or consolidated annual return under this
4 act but, as a result of the restructuring transaction, ceased to be
5 included in the purchaser's combined or consolidated annual return
6 under this act. This subdivision applies only to sales that
7 originate from a plant located in this state.

8 (b) Total sales under section 45 do not include sales to a
9 purchaser that was a member of a Michigan affiliated group that had
10 included the seller in the filing of a combined or consolidated
11 annual return under this act but, as a result of the restructuring
12 transaction, ceased to include the seller. This subdivision applies
13 only to sales that originate from a plant located in this state to
14 a location in this state.

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

1 under this section was first claimed.

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

6 (6) As used in this section:

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

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

18 Sec. 47. (1) The tax base of a taxpayer whose business
19 activities consist of transportation services rendered either
20 entirely within or partly within and partly outside this state
21 shall be determined under the provisions of this section and
22 section 48.

23 (2) The tax base attributable to this state of a taxpayer
24 described subsection (1), other than a taxpayer whose activity
25 consists of the transportation of oil or gas by pipeline, is that
26 portion of the tax base of the taxpayer derived from transportation
27 services wherever performed that the revenue miles of the taxpayer

1 in this state bear to the revenue miles of the taxpayer everywhere.

2 (3) The tax base attributable to this state of a taxpayer
3 whose business activity consists of the transportation both of
4 property and of individuals shall be that portion of the entire tax
5 base of the taxpayer that is equal to the sum of its passenger
6 miles and ton mile fractions, separately computed and individually
7 weighted by the ratio of gross receipts from passenger
8 transportation to total gross receipts from all transportation, and
9 by the ratio of gross receipts from freight transportation to total
10 gross receipts from all transportation, respectively.

11 (4) If the department determines that the information required
12 for the calculations under this section is not available or cannot
13 be obtained without unreasonable expense to the taxpayer, the
14 department may use other available information that in the opinion
15 of the department will result in an equitable allocation of the
16 taxpayer's receipts to this state.

17 Sec. 48. (1) The tax base attributable to this state of a
18 taxpayer whose business activity consists of the transportation of
19 oil by pipeline, is the tax base of the taxpayer in the ratio that
20 the barrel miles transported in this state bear to the barrel miles
21 transported by the taxpayer everywhere.

22 (2) The tax base attributable to this state of a taxpayer
23 whose business activities consists of the transportation of gas by
24 pipeline is the tax base of the taxpayer in the ratio that the
25 1,000 cubic feet miles transported in this state bear to the 1,000
26 cubic feet miles transported by the taxpayer everywhere.

27 Sec. 49. The tax base attributable to this state of a taxpayer

1 that is a financial organization is either of the following:

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

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

9 (i) Fees, commissions, or other compensation for financial
10 services.

11 (ii) Gross profits from trading in stocks, bonds, or other
12 securities.

13 (iii) Interest charged to customers for carrying debit balances
14 of margin accounts, without deduction of any costs incurred in
15 carrying the accounts.

16 (iv) Interest and dividends received.

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

19 (c) A taxpayer whose assets were wholly owned either directly
20 or indirectly by a taxpayer from whom a spun off corporation
21 qualifies to apportion its tax base under section 46 and that
22 ceased to be wholly owned on November 30, 2006 may annually elect
23 on its originally filed tax return to apportion its tax base to
24 this state using the same receipts factor reported on the combined
25 tax return filed by its former parent company for the same taxable
26 year.

27 Sec. 50. (1) If the apportionment provisions of this act do

1 not fairly represent the extent of the taxpayer's business activity
2 in this state, the taxpayer may petition for or the treasurer may
3 require the following, with respect to all or a portion of the
4 taxpayer's business activity, if reasonable:

5 (a) Separate accounting.

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

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

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

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

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

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

25 CHAPTER 4

26 Sec. 70. (1) A taxpayer that reasonably expects liability for
27 the tax year to exceed \$600.00 shall file an estimated return and

1 pay an estimated tax for each quarter of the taxpayer's tax year.

2 (2) For taxpayers on a calendar year basis, the quarterly
3 returns and estimated payments shall be made by April 15, July 15,
4 October 15, and January 15. Taxpayers not on a calendar year basis
5 shall file quarterly returns and make estimated payments on the
6 appropriate due date which in the taxpayer's fiscal year
7 corresponds to the calendar year.

8 (3) The estimated payment made with each quarterly return of
9 each tax year shall be for the estimated tax base for the quarter
10 or 25% of the estimated annual liability. The second, third, and
11 fourth estimated payments in each tax year shall include
12 adjustments, if necessary, to correct underpayments or overpayments
13 from previous quarterly payments in the tax year to a revised
14 estimate of the annual tax liability.

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

17 (a) If the sum of the estimated payments equals at least 85%
18 of the liability and the amount of each estimated payment
19 reasonably approximates the tax liability incurred during the
20 quarter for which the estimated payment was made.

21 (b) If the preceding year's tax liability under this act or
22 former 1975 PA 228 was \$20,000.00 or less and if the taxpayer
23 submitted 4 equal installments the sum of which equals the
24 immediately preceding tax year's tax liability.

25 (5) Each estimated return shall be made on a form prescribed
26 by the department and shall include an estimate of the annual tax
27 liability and other information required by the state treasurer.

1 The form prescribed under this subsection may be combined with any
2 other tax reporting form prescribed by the department.

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

7 (7) Payments made under this section shall be a credit against
8 the payment required with the annual tax return required in section
9 72.

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

14 (9) A taxpayer that elects under the internal revenue code to
15 file an annual federal income tax return by March 1 in the year
16 following the taxpayer's tax year and does not make a quarterly
17 estimate or payment, or does not make a quarterly estimate or
18 payment and files a tentative annual return with a tentative
19 payment by January 15 in the year following the taxpayer's tax year
20 and a final return by April 15 in the year following the taxpayer's
21 tax year, has the same option in filing the estimated and annual
22 returns required by this act.

23 Sec. 71. If a taxpayer's tax year to which this act applies
24 ends before December 31, 2008 or if a taxpayer's first tax year is
25 less than 12 months then a taxpayer subject to this act may elect
26 to compute the tax imposed by this act for the portion of that tax
27 year to which this act applies or that first tax year in accordance

1 with 1 of the following methods:

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

7 (b) The tax may be computed by determining the tax base in the
8 first tax year in accordance with an accounting method satisfactory
9 to the department that reflects the actual tax base attributable to
10 the period.

11 Sec. 72. (1) An annual or final return shall be filed with the
12 department in the form and content prescribed by the department by
13 the last day of the fourth month after the end of the taxpayer's
14 tax year. Any final liability shall be remitted with this return. A
15 person whose apportioned or allocated gross receipts are less than
16 \$350,000.00 does not need to file a return or pay the tax imposed
17 under this act.

18 (2) If a person has apportioned or allocated gross receipts
19 for a tax year of less than 12 months, the amount in subsection (1)
20 shall be multiplied by a fraction, the numerator of which is the
21 number of months in the tax year and the denominator of which is
22 12.

23 (3) The department, upon application of the taxpayer and for
24 good cause shown, may extend the date for filing the annual return.
25 Interest at the rate under section 23(2) of 1941 PA 122, MCL
26 205.23, shall be added to the amount of the tax unpaid for the
27 period of the extension. The treasurer shall require with the

1 application payment of the estimated tax liability unpaid for the
2 tax period covered by the extension.

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

13 (5) An affiliated group as defined in this act, a controlled
14 group of corporations as defined in section 1563 of the internal
15 revenue code and further described in 26 CFR 1.414(b)-1 and
16 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
17 defined in the internal revenue code shall consolidate the gross
18 receipts of the members of the affiliated group, member
19 corporations of the controlled group, or entities under common
20 control that have apportioned or allocated gross receipts, to
21 determine whether the group or entity shall pay a tax or file a
22 return as provided under subsection (1). An individual member of an
23 affiliated group or controlled group of corporations or an entity
24 under common control is not required to file a return or pay the
25 tax under this act if that member or entity has apportioned or
26 allocated gross receipts of less than \$100,000.00.

27 Sec. 73. (1) A taxpayer required to file a return under this

1 act may be required to furnish a true and correct copy of any
2 return or portion of any return filed under the provisions of the
3 internal revenue code.

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

9 Sec. 74. (1) At the request of the department, a person
10 required by the internal revenue code to file or submit an
11 information return of income paid to others shall, to the extent
12 the information is applicable to residents of this state, at the
13 same time file or submit the information in the form and content
14 prescribed to the department.

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

20 Sec. 75. (1) A taxpayer that is engaged in a unitary business
21 shall file a consolidated or combined return that includes each
22 United States person engaged in the unitary business. Each United
23 States person engaged in a unitary business or included in a
24 consolidated or combined return shall be treated as a single
25 taxpayer and all intercompany transactions shall be eliminated from
26 the tax base and the apportionment formula under this act.

27 (2) The common parent of an affiliated group may, on or before

1 the due date including any extensions granted for filing the
2 original return, elect to file a consolidated or combined return
3 regardless of whether each person is part of the unitary business
4 or is otherwise subject to tax under this act. If an election to
5 file a consolidated or combined return is made under this
6 subsection, the election may not be revoked unless the department
7 consents in writing to a change in the filing method.

8 (3) As used in this section, "unitary business" means business
9 activities or operations that result in a flow of value between
10 multiple entities that are related through common ownership or in a
11 flow of value within a single legal entity regardless of whether
12 each entity is a sole proprietorship, corporation, partnership, or
13 trust. Flow of value is determined by reviewing the totality of the
14 facts and circumstances of the business activities and operations.

15 Sec. 76. Except as expressly provided in section 75, a
16 provision of this act shall not be construed to permit or require
17 the filing of a consolidated or combined return or a consolidation
18 or combination of the tax base or apportionment factors of 2 or
19 more United States persons.

20 CHAPTER 5

21 Sec. 80. (1) The tax imposed by this act shall be administered
22 by the department of treasury pursuant to 1941 PA 122, MCL 205.1 to
23 205.31, and this act. If a conflict exists between 1941 PA 122, MCL
24 205.1 to 205.31, and this act, the provisions of this act apply.

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

1 (3) The department shall prescribe forms for use by taxpayers
2 and may promulgate rules in conformity with this act for the
3 maintenance by taxpayers of records, books, and accounts, and for
4 the computation of the tax, the manner and time of changing or
5 electing accounting methods and of exercising the various options
6 contained in this act, the making of returns, and the
7 ascertainment, assessment, and collection of the tax imposed under
8 this act.

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

11 (5) The department shall prepare and publish statistics from
12 the records kept to administer the tax imposed by this act that
13 detail the distribution of tax receipts by type of business, legal
14 form of organization, sources of tax base, timing of tax receipts,
15 and types of deductions. The statistics shall not result in the
16 disclosure of information regarding any specific taxpayer.

17 Sec. 81. The proceeds of the tax collected under this act
18 shall be deposited in the general fund.

19 Sec. 82. There is appropriated to the department for the 2006-
20 2007 state fiscal year the sum of \$10,000,000.00 to implement the
21 requirements of this act. Any portion of this amount under this
22 section that is not expended in the 2006-2007 state fiscal year
23 shall not lapse to the general fund but shall be carried forward in
24 a work project account that is in compliance with section 451a of
25 the management and budget act, 1984 PA 431, MCL 18.1451a, for the
26 following state fiscal year.

27

CHAPTER 6

1 Sec. 90. If a final order of a court of competent jurisdiction
2 for which all rights of appeal have been exhausted or have expired
3 determines that any provision of this act that provides a
4 deduction, credit, or exemption with respect to employment,
5 persons, services, investment, or any other activity that is
6 limited only to this state is unconstitutional or applies to
7 employment, persons, services, investment, or any other activity
8 outside of this state, that credit, deduction, or exemption shall
9 be severed and shall not be in effect for any other tax year for
10 which the final order shall apply, and the remaining provisions of
11 this act shall remain in effect.

12 Sec. 91. If a final order of a court of competent jurisdiction
13 for which all rights of appeal have been exhausted or have expired
14 determines that any provision of this act is subject to the
15 limitations of Public Law 86-272 or that the application of the
16 apportionment provisions of this act to section 9(2) or (3) is
17 unconstitutional, both of the following apply:

18 (a) The provisions of section 9(2) and (3) are severed from
19 this act.

20 (b) The rate imposed under section 20 for any tax year to
21 which that final order applies shall be 0.375%.

22 Enacting section 1. This act takes effect January 1, 2008 and
23 applies to all tax years ending after December 31, 2007.

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

27 (a) Senate Bill No. ____ or House Bill No. 4369(request no.

1 01847'07 *).

2 (b) Senate Bill No. _____ or House Bill No. 4370 (request no.

3 01848'07 *).

4 (c) Senate Bill No. _____ or House Bill No. 4371 (request no.

5 01849'07 *).

6 (d) Senate Bill No. _____ or House Bill No. 4372 (request no.

7 01850'07 *).

8 (e) Senate Bill No. _____ or House Bill No. 4368 (request no.

9 01851'07).