

HOUSE BILL No. 5432

September 22, 2009, Introduced by Rep. Cushingberry and referred to the Committee on Appropriations.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 266 and 435 (MCL 206.266 and 206.435), section 266 as amended by 2008 PA 447 and section 435 as amended by 2008 PA 560.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 266. (1) A qualified taxpayer with a rehabilitation plan
2 certified after December 31, 1998 may credit against the tax
3 imposed by this act the amount determined pursuant to subsection
4 (2) for the qualified expenditures for the rehabilitation of a
5 historic resource pursuant to the rehabilitation plan in the year
6 in which the certification of completed rehabilitation of the
7 historic resource is issued. Only those expenditures that are paid

1 or incurred during the time periods prescribed for the credit under
2 section 47(a)(2) of the internal revenue code and any related
3 treasury regulations shall be considered qualified expenditures.

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

16 (a) A taxpayer with qualified expenditures that are eligible
17 for the credit under section 47(a)(2) of the internal revenue code
18 may not claim a credit under this section for those qualified
19 expenditures unless the taxpayer has claimed and received a credit
20 for those qualified expenditures under section 47(a)(2) of the
21 internal revenue code or the taxpayer has elected to transfer the
22 credit under subsection (12).

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

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

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

5 (a) All of the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (v) The historic resource is subject to a historic
17 preservation easement.

18 (7) A credit amount assigned under section 39c(7) of former
19 1975 PA 228 or section 435 of the Michigan business tax act, 2007
20 PA 36, MCL 208.1435, may be claimed against the partner's,
21 member's, or shareholder's tax liability under this act as provided
22 in section 39c(7) of former 1975 PA 228 or section 435 of the
23 Michigan business tax act, 2007 PA 36, MCL 208.1435.

24 (8) If the credit allowed under this section for the tax year
25 and any unused carryforward of the credit allowed by this section
26 exceed the taxpayer's tax liability for the tax year, that portion
27 that exceeds the tax liability for the tax year shall not be

1 refunded but may be carried forward to offset tax liability in
2 subsequent tax years for 10 years or until used up, whichever
3 occurs first. For projects for which a certificate of completed
4 rehabilitation is issued for a tax year beginning after December
5 31, 2008 and for which the credit amount allowed is less than
6 \$250,000.00, a qualified taxpayer may elect to forgo the carryover
7 period and receive a refund of the amount of the credit that
8 exceeds the qualified taxpayer's tax liability. The amount of the
9 refund shall be equal to 90% of the amount of the credit that
10 exceeds the qualified taxpayer's tax liability. An election under
11 this subsection shall be made in the year that a certificate of
12 completed rehabilitation is issued and shall be irrevocable.

13 (9) For tax years beginning before January 1, 2009, if a
14 taxpayer sells a historic resource for which a credit under this
15 section was claimed less than 5 years after the year in which the
16 credit was claimed, the following percentage of the credit amount
17 previously claimed relative to that historic resource shall be
18 added back to the tax liability of the taxpayer in the year of the
19 sale:

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

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

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

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

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

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

6 (10) For tax years beginning before January 1, 2009, if a
7 certification of completed rehabilitation is revoked under
8 subsection (5) less than 5 years after the year in which a credit
9 was claimed, the following percentage of the credit amount
10 previously claimed relative to that historic resource shall be
11 added back to the tax liability of the taxpayer in the year of the
12 revocation:

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

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

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

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

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

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

26 (11) For tax years beginning after December 31, 2008, if a
27 certificate of completed rehabilitation is revoked under subsection

1 (5) or if the historic resource is sold or disposed of less than 5
2 years after being placed in service as defined in section 47(b)(1)
3 of the internal revenue code and related treasury regulations, the
4 following percentage of the credit amount previously claimed
5 relative to that historic resource shall be added back to the tax
6 liability of the qualified taxpayer that received the certificate
7 of completed rehabilitation and not the assignee in the year of the
8 revocation:

9 (a) If the revocation is less than 1 year after the historic
10 resource is placed in service, 100%.

11 (b) If the revocation is at least 1 year but less than 2 years
12 after the historic resource is placed in service, 80%.

13 (c) If the revocation is at least 2 years but less than 3
14 years after the historic resource is placed in service, 60%.

15 (d) If the revocation is at least 3 years but less than 4
16 years after the historic resource is placed in service, 40%.

17 (e) If the revocation is at least 4 years but less than 5
18 years after the historic resource is placed in service, 20%.

19 (f) If the revocation is at least 5 years or more after the
20 historic resource is placed in service, an addback to the qualified
21 taxpayer tax liability shall not be required.

22 (12) A qualified taxpayer who receives a certificate of
23 completed rehabilitation after December 31, 2008 may elect to forgo
24 claiming the credit and transfer the credit along with the
25 ownership of the property for which the credit may be claimed to a
26 new owner. The new owner shall be treated as the qualified taxpayer
27 having incurred the rehabilitation costs and shall be subject to

1 the recapture provisions under subsection (11) if the new owner
2 sells or disposes of the property within 5 years after the new
3 owner acquired the property. For purposes of this subsection and
4 subsection (11), the placed in service date for a new owner is the
5 date the new owner acquired the property for which the credit is
6 claimed.

7 (13) The department of ~~history, arts, and libraries~~ **STATE**
8 through the Michigan historical center may impose a fee to cover
9 the administrative cost of implementing the program under this
10 section.

11 (14) The qualified taxpayer shall attach all of the following
12 to the qualified taxpayer's annual return under this act:

13 (a) Certification of completed rehabilitation.

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

17 (c) A completed assignment form if the qualified taxpayer is
18 an assignee under section 39c of former 1975 PA 228 or section 435
19 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, of any
20 portion of a credit allowed under that section.

21 (15) The department of ~~history, arts, and libraries~~ **STATE**
22 shall promulgate rules to implement this section pursuant to the
23 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
24 24.328.

25 (16) The total of the credits claimed under this section and
26 section 39c of former 1975 PA 228 or section 435 of the Michigan
27 business tax act, 2007 PA 36, MCL 208.1435, for a rehabilitation

1 project shall not exceed 25% of the total qualified expenditures
2 eligible for the credit under this section for that rehabilitation
3 project.

4 (17) The department of ~~history, arts, and libraries~~ **STATE**
5 through the Michigan historical center shall report all of the
6 following to the legislature annually for the immediately preceding
7 state fiscal year:

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

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

11 (c) The location of each new and ongoing rehabilitation
12 project.

13 (18) As used in this section:

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

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

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

1 historic places and includes all of the following:

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

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

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

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

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

16 (d) "Local unit" means a county, city, village, or township.

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

20 (f) "Michigan historical center" or "center" means the state
21 historic preservation office of the Michigan historical center of
22 the department of ~~history, arts, and libraries~~ **STATE** or its
23 successor agency.

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

27 (h) "Person" means an individual, partnership, corporation,

1 association, governmental entity, or other legal entity.

2 (i) "Qualified expenditures" means capital expenditures that
3 qualify, or would qualify except that the taxpayer elected to
4 transfer the credit under subsection (12), for a rehabilitation
5 credit under section 47(a)(2) of the internal revenue code if the
6 taxpayer is eligible for the credit under section 47(a)(2) of the
7 internal revenue code or, if the taxpayer is not eligible for the
8 credit under section 47(a)(2) of the internal revenue code, the
9 qualified expenditures that would qualify under section 47(a)(2) of
10 the internal revenue code except that the expenditures are made to
11 a historic resource that is not eligible for the credit under
12 section 47(a)(2) of the internal revenue code, that were paid.
13 Qualified expenditures do not include capital expenditures for
14 nonhistoric additions to a historic resource except an addition
15 that is required by state or federal regulations that relate to
16 historic preservation, safety, or accessibility.

17 (j) "Qualified taxpayer" means a person that is an assignee
18 under section 39c of former 1975 PA 228 or section 435 of the
19 Michigan business tax act, 2007 PA 36, MCL 208.1435, or either owns
20 the resource to be rehabilitated or has a long-term lease agreement
21 with the owner of the historic resource and that has qualified
22 expenditures for the rehabilitation of the historic resource equal
23 to or greater than 10% of the state equalized valuation of the
24 property. If the historic resource to be rehabilitated is a portion
25 of a historic or nonhistoric resource, the state equalized
26 valuation of only that portion of the property shall be used for
27 purposes of this subdivision. If the assessor for the local tax

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

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

16 Sec. 435. (1) Except as otherwise provided under this section,
17 for the 2008 tax year and each tax year after the 2008 tax year, an
18 individual may designate in a manner and form as prescribed by the
19 department pursuant to subsection (2) on his or her annual return
20 that contributions of \$5.00, \$10.00, or more of his or her refund
21 be credited to any of the following:

22 (a) For the 2010 tax year and each tax year after the 2010 tax
23 year, the Michigan higher education assistance authority created in
24 section 1 of 1960 PA 77, MCL 390.951, for the children of veterans
25 tuition grant program created in the children of veterans tuition
26 grant act, 2005 PA 248, MCL 390.1341 to 390.1346. No money from the
27 contributions designated to this subdivision shall be used for the

1 purpose of administering this section.

2 (b) For the 2010 tax year and each tax year after the 2010 tax
3 year, the children's trust fund created in 1982 PA 249, MCL 21.171
4 to 21.172.

5 (c) The prostate cancer research fund created in the prostate
6 cancer research fund act, 2007 PA 135, MCL 333.26241 to 333.26246.

7 (d) Amanda's fund for breast cancer prevention and treatment
8 created in the Amanda's fund for breast cancer prevention and
9 treatment act, 2007 PA 134, MCL 333.26231 to 333.26237.

10 (e) The animal welfare fund created in the animal welfare fund
11 act, 2007 PA 132, MCL 287.991 to 287.997.

12 (f) The Michigan housing and community development fund
13 created in section 58a of the state housing development authority
14 act of 1966, 1966 PA 346, MCL 125.1458a.

15 (g) The Michigan law enforcement officers memorial monument
16 fund created in section 3 of the Michigan law enforcement officers
17 memorial act, 2004 PA 177, MCL 28.783.

18 (h) For the 2009 tax year and each tax year after the 2009 tax
19 year, the renewable fuels fund created in section 5a of the motor
20 fuels quality act, 1984 PA 44, MCL 290.645a.

21 (i) The Michigan council for the arts fund created in section
22 9 of the ~~history, arts, and libraries act~~ **COUNCIL FOR ARTS AND**
23 **CULTURAL AFFAIRS ACT**, 2001 PA 63, MCL 399.709.

24 (j) For the 2009 tax year and each tax year after the 2009 tax
25 year, the foster care trust fund created in section 5 of the foster
26 care trust fund act.

27 (k) For the 2009 tax year and each tax year after the 2009 tax

1 year, the children's miracle network fund created in section 5 of
2 the children's miracle network fund act.

3 (l) For the 2009 tax year and each tax year after the 2009 tax
4 year, the children's hospital of Michigan fund created in section
5 15 of the children's hospital of Michigan act.

6 (m) For the 2009 tax year and each tax year after the 2009 tax
7 year, the united way fund created in section 3 of the united way
8 fund act.

9 (2) The department shall establish and utilize a separate
10 contributions schedule that incorporates each contribution
11 designation authorized under this section that remains in effect
12 and available for each tax year and shall revise the state
13 individual income tax return form to include a separate line for
14 the total contribution designations made under the separate
15 contributions schedule. The contribution designations authorized
16 under sections 437 and 440 shall remain on the first page of the
17 state individual income tax return for the 2008 and 2009 tax years,
18 but shall be incorporated into the contributions schedule for the
19 2010 tax year and shall remain on the schedule until the
20 contribution designation expires by law or is otherwise no longer
21 available as determined by the department pursuant to subsection
22 (3). A contribution designation that is enacted after November 1,
23 2007 shall be incorporated as soon as practical on the
24 contributions schedule, and each new contribution designation shall
25 be listed on the schedule in alphabetical order.

26 (3) The department may cease to include a contribution
27 designation on the contributions schedule if that contribution

1 designation fails to raise \$100,000.00 in any tax year for 2
2 consecutive tax years.

3 (4) If an individual's refund is not sufficient to make a
4 contribution under this section, the individual may designate a
5 contribution amount and that contribution amount shall be added to
6 the individual's tax liability for the tax year.

7 (5) Notwithstanding any other allocations or disbursements
8 required by this act, each year that a contribution designation
9 under this section is in effect, an amount equal to the cumulative
10 designation made under this section, less the amount appropriated
11 to the department to implement this section, shall be appropriated
12 from the general fund and distributed to the department responsible
13 for administering the appropriate fund to which the taxpayer
14 designated his or her contribution and shall be used solely for the
15 purposes of that fund.

16 (6) Money appropriated pursuant to an appropriations act as
17 required by law in accordance with this section to the department
18 responsible for administering each respective fund shall be in
19 addition to any other allocation or appropriation and is intended
20 to enhance appropriations from the general fund and not to replace
21 or supplant those appropriations.

22 Enacting section 1. This amendatory act does not take effect
23 unless Senate Bill No. ____ or House Bill No. 5423 (request no.
24 01945'09) of the 95th Legislature is enacted into law.