

**SUBSTITUTE FOR  
HOUSE BILL NO. 5246**

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending section 38g (MCL 208.38g), as amended by 2002 PA  
726.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 38g. (1) Subject to the criteria under this section, an  
2 eligible taxpayer may claim a credit against the tax imposed by  
3 this act as determined under subsections (20) to (25); and  
4 subject to the criteria under this section, a qualified taxpayer  
5 that has a preapproval letter issued after December 31, 1999 and  
6 before January 1, 2008, provided that the project is completed  
7 not more than 5 years after the preapproval letter for the  
8 project is issued, or an assignee under subsection (17) or (18)  
9 may claim a credit that has been approved under subsection (2) or  
10 (3) against the tax imposed by this act equal to either of the

1 following:

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

11 (b) If the total of all credits for a project is more than  
12 \$1,000,000.00 but \$30,000,000.00 or less and, except as provided  
13 in subsection (5)(b), the project is located in a qualified local  
14 governmental unit, a percentage as determined by the Michigan  
15 economic growth authority not to exceed 10% of the cost of the  
16 qualified taxpayer's eligible investment as determined under  
17 subsection (8) paid or accrued by the qualified taxpayer on an  
18 eligible property. If eligible investment exceeds the amount of  
19 eligible investment in the preapproval letter for that project,  
20 the total of all credits for the project shall not exceed the  
21 total of all credits on the certificate of completion.

22 (2) If the cost of a project will be for \$10,000,000.00 or  
23 less, a qualified taxpayer shall apply to the ~~department~~  
24 **Michigan economic growth authority** for approval of the project  
25 under this subsection. An application under this subsection  
26 shall state whether the project is a multiphase project. The  
27 ~~state treasurer or a designee of the state treasurer~~

1 **chairperson of the Michigan economic growth authority or his or**  
2 **her designee** is authorized to approve an application or project  
3 under this subsection. Only the ~~state treasurer~~ **chairperson of**  
4 **the Michigan economic growth authority** is authorized to deny an  
5 application or project under this subsection. A project shall be  
6 approved or denied not more than 45 days after receipt of the  
7 application. If the ~~state treasurer or the state treasurer's~~  
8 **chairperson of the Michigan economic growth authority or his or**  
9 **her** designee does not approve or deny an application within 45  
10 days after the application is received by the ~~department~~  
11 **Michigan economic growth authority**, the application is considered  
12 approved as written. The total of all credits for all projects  
13 approved under this subsection shall not exceed \$30,000,000.00 in  
14 any calendar year. The criteria in subsection (6) shall be used  
15 when approving projects under this subsection. When approving  
16 projects under this subsection, priority shall be given to  
17 projects on a facility. The total of all credits for an approved  
18 project under this subsection shall not exceed \$1,000,000.00. A  
19 taxpayer may apply under this subsection instead of subsection  
20 (3) for approval of a project that will be for more than  
21 \$10,000,000.00 but the total of all credits for that project  
22 shall not exceed \$1,000,000.00. If the ~~state treasurer or a~~  
23 ~~designee of the state treasurer~~ **chairperson of the Michigan**  
24 **economic growth authority or his or her designee** approves a  
25 project under this subsection, the ~~state treasurer or a designee~~  
26 ~~of the state treasurer~~ **chairperson of the Michigan economic**  
27 **growth authority or his or her designee** shall issue a preapproval

1 letter that states that the taxpayer is a qualified taxpayer; the  
2 maximum total eligible investment for the project on which  
3 credits may be claimed and the maximum total of all credits for  
4 the project when the project is completed and a certificate of  
5 completion is issued; and the project number assigned by the  
6 ~~department~~ **Michigan economic growth authority**. If a project is  
7 denied under this subsection, a taxpayer is not prohibited from  
8 subsequently applying under this subsection or subsection (3) for  
9 the same project or for another project.

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

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

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

1 functionally obsolete and the underlying basis for that opinion.

2 (5) The Michigan economic growth authority may approve not  
3 more than 15 projects each calendar year under subsection (3),  
4 and the following limitations apply:

5 (a) Of the 15 projects allowed under this subsection, the  
6 total of all credits for each project may be more than  
7 \$10,000,000.00 but \$30,000,000.00 or less for up to 3 projects.

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

16 (c) Of the 3 projects allowed under subdivision (a), 1 may be  
17 a project that also qualifies under subdivision (b).

18 (6) The Michigan economic growth authority shall review all  
19 applications for projects under subsection (3) and, if an  
20 application is approved, shall determine the maximum total of all  
21 credits for that project. Before approving a project for which  
22 the total of all credits will be more than \$10,000,000.00 but  
23 \$30,000,000.00 or less only, the Michigan economic growth  
24 authority shall determine that the project would not occur in  
25 this state without the tax credit offered under subsection (3),  
26 except that the Michigan economic growth authority may approve 1  
27 project the construction of which began after January 1, 2000 and

1 before January 1, 2001 without determining that the eligible  
2 investment would not occur in this state without the tax credit  
3 offered under this section. The Michigan economic growth  
4 authority shall consider the following criteria to the extent  
5 reasonably applicable to the type of project proposed when  
6 approving a project under subsection (3) and the ~~state treasurer~~  
7 ~~or a designee of the state treasurer~~ **chairperson of the Michigan**  
8 **economic growth authority or his or her designee** shall consider  
9 the following criteria to the extent reasonably applicable to the  
10 type of project proposed when approving a project under  
11 subsection (2) or when considering an amendment to a project  
12 under subsection (31):

13 (a) The overall benefit to the public.

14 (b) The extent of reuse of vacant buildings and redevelopment  
15 of blighted property.

16 (c) Creation of jobs.

17 (d) Whether the eligible property is in an area of high  
18 unemployment.

19 (e) The level and extent of contamination alleviated by the  
20 qualified taxpayer's eligible activities to the extent known to  
21 the qualified taxpayer.

22 (f) The level of private sector contribution.

23 (g) The cost gap that exists between the site and a similar  
24 greenfield site as determined by the Michigan economic growth  
25 authority.

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

1 (i) Whether the financial statements of the qualified  
2 taxpayer indicate that it is financially sound and that the  
3 project is economically sound.

4 (j) Any other criteria that the Michigan economic growth  
5 authority or the ~~state treasurer~~ **chairperson of the Michigan**  
6 **economic growth authority**, as applicable, considers appropriate  
7 for the determination of eligibility under subsection (2) or  
8 (3).

9 (7) A qualified taxpayer may apply for projects under  
10 subsection (2) or (3) for eligible investment on more than 1  
11 eligible property in a tax year. Each project approved and each  
12 project for which a certificate of completion is issued under  
13 this section shall be for eligible investment on 1 eligible  
14 property.

15 (8) When a project under subsection (2) or (3) is completed,  
16 the taxpayer shall submit documentation that the project is  
17 completed, an accounting of the cost of the project, the eligible  
18 investment of each taxpayer if there is more than 1 taxpayer  
19 eligible for a credit for the project, and, if the taxpayer is  
20 not the owner or lessee of the eligible property on which the  
21 eligible investment was made at the time the project is  
22 completed, that the taxpayer was the owner or lessee of that  
23 eligible property when all eligible investment of the taxpayer  
24 was made. The ~~state treasurer or a designee of the state~~  
25 ~~treasurer~~ **chairperson of the Michigan economic growth authority**  
26 **or his or her designee**, for projects approved under subsection  
27 (2), or the Michigan economic growth authority, for projects



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

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

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

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

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

19 (e) The project number.

20 (f) For a project approved under subsection (3) for which the  
21 total of all credits is more than \$10,000,000.00 but  
22 \$30,000,000.00 or less, the total of all credits and the schedule  
23 on which the annual credit amount shall be claimed by the  
24 qualified taxpayer.

25 (g) For a multiphase project under subsection ~~(33)~~ **(32)**,  
26 the amount of each credit assigned and the amount of all credits  
27 claimed in each tax year before the year in which the project is

1 completed.

2 (9) Except as otherwise provided in this section, qualified  
3 taxpayers shall claim credits under subsections (2) and (3) in  
4 the tax year in which the certificate of completion is issued.  
5 For a project approved under subsection (3) for which the total  
6 of all credits is more than \$10,000,000.00 but \$30,000,000.00 or  
7 less, the qualified taxpayer shall claim 10% of its approved  
8 credit each year for 10 years. A credit assigned based on a  
9 multiphase project shall be claimed in the year in which the  
10 credit is assigned.

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

21 (11) For credits under subsections (2) and (3), credits  
22 claimed by a lessee of eligible property are subject to the total  
23 of all credits limitation under this section.

24 (12) Each qualified taxpayer and assignee under subsection  
25 (17) or (18) that claims a credit under subsection (1)(a) or (b)  
26 shall attach a copy of the certificate of completion and, if the  
27 credit was assigned, a copy of the assignment form provided for

1 under this section to the annual return filed under this act on  
2 which the credit under subsection (2) or (3) is claimed. An  
3 assignee of a credit based on a multiphase project shall attach a  
4 copy of the assignment form provided for under this section and  
5 the component completion certificate provided for in  
6 subsection (32) to the annual return filed under this act on  
7 which the credit is claimed but is not required to file a copy of  
8 a certificate of completion.

9 (13) Except as otherwise provided in this subsection or  
10 subsection (15), (17), (19), or (32), a credit under subsection  
11 (2) or (3) shall be claimed in the tax year in which the  
12 certificate of completion is issued to the qualified taxpayer.  
13 For a project described in subsection (8)(f) for which a schedule  
14 for claiming annual credit amounts is designated on the  
15 certificate of completion by the Michigan economic growth  
16 authority, the annual credit amount shall be claimed in the tax  
17 year specified on the certificate of completion.

18 (14) The credits approved under this section shall be  
19 calculated after application of all other credits allowed under  
20 this act. The credits under subsections (2) and (3) shall be  
21 calculated before the calculation of credits under subsections  
22 (20) to (25) and before the credits under sections 37c and 37d.

23 (15) If the credit allowed under subsection (2) or (3) for  
24 the tax year and any unused carryforward of the credit allowed  
25 under subsection (2) or (3) exceed the qualified taxpayer's or  
26 assignee's tax liability for the tax year, that portion that  
27 exceeds the tax liability for the tax year shall not be refunded

1 but may be carried forward to offset tax liability in subsequent  
2 tax years for 10 years or until used up, whichever occurs first.  
3 Except as otherwise provided in this subsection, the maximum time  
4 allowed under the carryforward provisions under this subsection  
5 begins with the tax year in which the certificate of completion  
6 is issued to the qualified taxpayer. If the qualified taxpayer  
7 assigns all or any portion of its credit approved under  
8 subsection (2) or (3), the maximum time allowed under the  
9 carryforward provisions for an assignee begins to run with the  
10 tax year in which the assignment is made and the assignee first  
11 claims a credit, which shall be the same tax year. The maximum  
12 time allowed under the carryforward provisions for an annual  
13 credit amount for a credit allowed under subsection (3) begins to  
14 run in the tax year for which the annual credit amount is  
15 designated on the certificate of completion issued under this  
16 section.

17 (16) If a project or credit under subsection (2) or (3) is  
18 for the addition of personal property, if the cost of that  
19 personal property is used to calculate a credit under subsection  
20 (2) or (3), and if the personal property is sold or disposed of  
21 or transferred from eligible property to any other location, the  
22 qualified taxpayer that sold, disposed of, or transferred the  
23 personal property shall add the same percentage as determined  
24 pursuant to subsection (1) of the federal basis of the personal  
25 property used for determining gain or loss as of the date of the  
26 sale, disposition, or transfer to the qualified taxpayer's tax  
27 liability after application of all credits under this act for the

1 tax year in which the sale, disposition, or transfer occurs. If  
2 a qualified taxpayer has an unused carryforward of a credit under  
3 subsection (2) or (3), the amount otherwise added under this  
4 subsection to the qualified taxpayer's tax liability may instead  
5 be used to reduce the qualified taxpayer's carryforward under  
6 subsection (15).

7 (17) For credits under subsections (2) and (3) and except as  
8 otherwise provided in this subsection, if a qualified taxpayer  
9 pays or accrues eligible investment on or to an eligible property  
10 that is leased for a minimum term of 10 years or sold to another  
11 taxpayer for use in a business activity, the qualified taxpayer  
12 may assign all or a portion of the credit based on that eligible  
13 investment to the lessee or purchaser of that eligible property.  
14 A credit assignment under this subsection shall only be made to a  
15 taxpayer that when the assignment is complete will be a qualified  
16 taxpayer. All credit assignments under this subsection are  
17 irrevocable and, except for a credit based on a multiphase  
18 project, shall be made in the tax year in which the certificate  
19 of completion is issued, unless the assignee is an unknown  
20 lessee. If a qualified taxpayer wishes to assign all or a  
21 portion of its credit to a lessee but the lessee is unknown in  
22 the tax year in which the certificate of completion is issued,  
23 the qualified taxpayer may delay claiming and assigning the  
24 credit until the first tax year in which the lessee is known. A  
25 qualified taxpayer may claim a portion of a credit and assign the  
26 remaining credit amount. Except as otherwise provided in this  
27 subsection, if the qualified taxpayer both claims and assigns

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

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

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

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

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

9 (18) If a qualified taxpayer is a partnership, limited  
10 liability company, or subchapter S corporation, the qualified  
11 taxpayer may assign all or a portion of a credit allowed under  
12 subsection (2) or (3) to its partners, members, or shareholders,  
13 based on their proportionate share of ownership of the  
14 partnership, limited liability company, or subchapter S  
15 corporation or based on an alternative method approved by the  
16 ~~department~~ **Michigan economic growth authority**. A credit  
17 assignment under this subsection is irrevocable and, except for a  
18 credit assignment based on a multiphase project, shall be made in  
19 the tax year in which a certificate of completion is issued. A  
20 qualified taxpayer may claim a portion of a credit and assign the  
21 remaining credit amount. If the qualified taxpayer both claims  
22 and assigns portions of the credit, the qualified taxpayer shall  
23 claim the portion it claims in the tax year in which a  
24 certificate of completion is issued. A partner, member, or  
25 shareholder that is an assignee shall not subsequently assign a  
26 credit or any portion of a credit assigned under this  
27 subsection. The credit assignment under this subsection shall be

1 made on a form prescribed by the ~~department~~ **Michigan economic**  
2 **growth authority**. The qualified taxpayer shall send a copy of  
3 the completed assignment form to the ~~department~~ **Michigan**  
4 **economic growth authority** in the tax year in which the assignment  
5 is made. A partner, member, or shareholder who is an assignee  
6 shall attach a copy of the completed assignment form to its  
7 annual return required under this act, for the tax year in which  
8 the assignment is made and the assignee first claims a credit,  
9 which shall be the same tax year. In addition to all other  
10 procedures under this subsection, the following apply if the  
11 total of all credits for a project is more than \$10,000,000.00  
12 but \$30,000,000.00 or less:

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

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

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

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

23 (19) A qualified taxpayer or assignee under subsection (17)  
24 or (18) shall not claim a credit under subsection (1)(a) or (b)  
25 based on eligible investment on which a credit claimed under  
26 section 38d was based.

27 (20) In addition to the other credits allowed under this



1 section and sections 37c and 37d, for tax years that begin after  
2 December 31, 1999 and for a period of time not to exceed 20 years  
3 as determined by the Michigan economic growth authority, an  
4 eligible taxpayer may credit against the tax imposed by section  
5 31 the amount certified each year by the Michigan economic growth  
6 authority that is 1 of the following:

7 (a) For an eligible business under section 8(5)(a) of the  
8 Michigan economic growth authority act, 1995 PA 24, MCL 207.808,  
9 an amount that is not more than 50% of 1 or both of the following  
10 as determined by the Michigan economic growth authority:

11 (i) An amount determined under the Michigan economic growth  
12 authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not  
13 exceed the payroll of the eligible taxpayer attributable to  
14 employees who perform retained jobs multiplied by the tax rate  
15 for the tax year.

16 (ii) The tax liability attributable to the eligible  
17 taxpayer's business activity multiplied by a fraction the  
18 numerator of which is the ratio of the value of new capital  
19 investment to all of the taxpayer's property located in this  
20 state plus the ratio of the taxpayer's payroll attributable to  
21 retained jobs to all of the taxpayer's payroll in this state and  
22 the denominator of which is 2.

23 (b) For an eligible business under section 8(5)(b) of the  
24 Michigan economic growth authority act, 1995 PA 24, MCL 207.808,  
25 an amount that is not more than 1 or both of the following as  
26 determined by the Michigan economic growth authority:

27 (i) An amount determined under the Michigan economic growth

1 authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not  
2 exceed the payroll of the eligible taxpayer attributable to  
3 employees who perform retained jobs multiplied by the tax rate  
4 for the tax year.

5 (ii) The tax liability attributable to eligible taxpayer's  
6 business **activity** multiplied by a fraction the numerator of which  
7 is the ratio of the value of capital investment to all of the  
8 taxpayer's property located in this state plus the ratio of the  
9 taxpayer's payroll attributable to retained jobs to all of the  
10 taxpayer's payroll in this state and the denominator of which is  
11 2.

12 (21) An eligible taxpayer shall not claim a credit under  
13 subsection (20) unless the Michigan economic growth authority has  
14 issued a certificate under section 9 of the Michigan economic  
15 growth authority act, 1995 PA 24, MCL 207.809, to the taxpayer.  
16 The eligible taxpayer shall attach the certificate to the return  
17 filed under this act on which a credit under subsection (20) is  
18 claimed.

19 (22) An affiliated group as defined in this act, a controlled  
20 group of corporations as defined in section 1563 of the internal  
21 revenue code and further described in 26 ~~C.F.R.~~ **CFR** 1.414(b)-1  
22 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control  
23 as defined by the internal revenue code shall claim only 1 credit  
24 under subsection (20) for each tax year based on each written  
25 agreement whether or not a combined or consolidated return is  
26 filed.

27 (23) A credit shall not be claimed by a taxpayer under

House Bill No. 5246 (H-2) as amended December 10, 2003

1 subsection (20) if the eligible taxpayer's initial certification  
2 under section 9 of the Michigan economic growth authority act,  
3 1995 PA 24, MCL 207.809, is issued after December 31, ~~2003~~  
4 2009. [If the Michigan economic growth authority or a designee of the  
5 Michigan economic growth authority requests that a taxpayer who claims  
6 the credit under subsection (20) get a statement prepared by a  
7 certified public accountant verifying that the actual number of new  
8 jobs created is the same number of new jobs used to calculate the credit  
9 under subsection (20), the taxpayer shall get the statement and attach  
10 that statement to its annual return under this act on which the credit  
under subsection (20) is claimed.]

11 (24) If the credit allowed under subsection (20)(a)(ii) or  
12 (b)(ii) for the tax year and any unused carryforward of the  
13 credit allowed by subsection (20)(a)(ii) or (b)(ii) exceed the  
14 taxpayer's tax liability for the tax year, that portion that  
15 exceeds the tax liability for the tax year shall not be refunded  
16 but may be carried forward to offset tax liability in subsequent  
17 tax years for 10 years or until used up, whichever occurs first.

18 (25) If the credit allowed under subsection (20)(a)(i) or  
19 (b)(i) exceeds the tax liability of the eligible taxpayer for the  
20 tax year, the excess shall be refunded to the eligible taxpayer.

21 (26) An eligible taxpayer that claims a credit under  
22 subsection (1)(a) or (b) is not prohibited from claiming a credit  
23 under subsection (20). However, the eligible taxpayer shall not  
24 claim a credit under both subsections (1)(a) or (b) and (20)  
25 based on the same costs.

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

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

9 (28) Eligible investment attributable or related to the  
10 operation of a casino, and eligible investment that is associated  
11 or affiliated with the operation of a casino, including, but not  
12 limited to, the operation of a parking lot, hotel, motel, or  
13 retail store, shall not be used as a basis for a credit under  
14 subsection (2) or (3). As used in this subsection, "casino"  
15 means a casino regulated by this state pursuant to the Michigan  
16 gaming control and revenue act, the Initiated Law of 1996,  
17 MCL 432.201 to 432.226.

18 (29) Eligible investment attributable or related to the  
19 construction of a new landfill or the expansion of an existing  
20 landfill regulated under part 115 of the natural resources and  
21 environmental protection act, 1994 PA 451, MCL 324.11501 to  
22 324.11550, shall not be used as a basis for a credit under  
23 subsection (2) or (3).

24 (30) The ~~department~~ **Michigan economic growth authority**  
25 annually shall prepare and submit to the house of representatives  
26 and senate committees responsible for tax policy and economic  
27 development issues a report on the credits under subsection (2).

1 The report shall include, but is not limited to, all of the  
2 following:

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

5 (b) The total amount of eligible investment for projects  
6 approved under subsection (2) in the calendar year.

7 (31) If, after a taxpayer's project has been approved and the  
8 taxpayer has received a preapproval letter but before the project  
9 is completed, the taxpayer determines that the project cannot be  
10 completed as preapproved, the taxpayer may petition ~~the~~  
11 ~~department for projects approved under subsection (2) or the~~  
12 ~~Michigan economic growth authority for projects approved under~~  
13 ~~subsection (3)~~ to amend the project. The total of eligible  
14 investment for the project as amended shall not exceed the amount  
15 allowed in the preapproval letter for that project.

16 (32) A project under subsection (2) may be a multiphase  
17 project but only if the project is an industrial or manufacturing  
18 project. If a project is a multiphase project, when each  
19 component of the multiphase project is completed, the taxpayer  
20 shall submit documentation that the component is complete, an  
21 accounting of the cost of the component, and the eligible  
22 investment for the component of each taxpayer eligible for a  
23 credit for the project of which the component is a part to the  
24 ~~state treasurer~~ **Michigan economic growth authority** or the  
25 designee of the ~~state treasurer~~ **Michigan economic growth**  
26 **authority**, who shall verify that the component is complete. When  
27 the completion of the component is verified, a component

1 completion certificate shall be issued to the qualified taxpayer  
2 which shall state that the taxpayer is a qualified taxpayer, the  
3 credit amount for the component, the qualified taxpayer's federal  
4 employer identification number or the Michigan treasury number  
5 assigned to the taxpayer, and the project number. The taxpayer  
6 may assign all or part of the credit for a multiphase project as  
7 provided in this section after a component completion certificate  
8 for a component is issued. The qualified taxpayer may transfer  
9 ownership of or lease the completed component and assign a  
10 proportionate share of the credit for the entire project to the  
11 qualified taxpayer that is the new owner or lessee. A multiphase  
12 project shall not be divided into more than 3 components. A  
13 component is considered to be completed when a certificate of  
14 occupancy has been issued by the local municipality in which the  
15 project is located for all of the buildings or facilities that  
16 comprise the completed component and a component completion  
17 certificate is issued. A credit assigned based on a multiphase  
18 project shall be claimed by the assignee in the tax year in which  
19 the assignment is made. The total of all credits for a  
20 multiphase project shall not exceed the amount stated in the  
21 preapproval letter for the project under subsection (1)(a). If  
22 all components of a multiphase project are not completed by 10  
23 years after the date on which the preapproval letter for the  
24 project was issued, the qualified taxpayer that received the  
25 preapproval letter for the project shall pay to the state  
26 treasurer, as a penalty, an amount equal to the sum of all  
27 credits claimed and assigned for all components of the multiphase

1 project and no credits based on that multiphase project shall be  
2 claimed after that date by the qualified taxpayer or any assignee  
3 of the qualified taxpayer. The penalty under this subsection is  
4 subject to interest on the amount of the credit claimed or  
5 assigned determined individually for each component at the rate  
6 in section 23(2) of 1941 PA 122, MCL 205.23, beginning on the  
7 date that the credit for that component was claimed or assigned.  
8 As used in this subsection, "proportionate share" means the same  
9 percentage of the total of all credits for the project that the  
10 qualified investment for the completed component is of the total  
11 qualified investment stated in the preapproval letter for the  
12 entire project.

13 (33) As used in this section:

14 (a) "Annual credit amount" means the maximum amount that a  
15 qualified taxpayer is eligible to claim each tax year for a  
16 project for which the total of all credits is more than  
17 \$10,000,000.00 but \$30,000,000.00 or less, which shall be 10% of  
18 the qualified taxpayer's credit amount approved under subsection  
19 (3).

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

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

1 (d) "Blighted", "brownfield plan", "eligible activities",  
2 "eligible property", "facility", "functionally obsolete", and  
3 "response activity" mean those terms as defined in the brownfield  
4 redevelopment financing act, 1996 PA 381, MCL 125.2651 to  
5 125.2672.

6 (e) "Eligible investment" means demolition, construction,  
7 restoration, alteration, renovation, or improvement of buildings  
8 or site improvements on eligible property and the addition of  
9 machinery, equipment, and fixtures to eligible property after the  
10 date that eligible activities on that eligible property have  
11 started pursuant to a brownfield plan under the brownfield  
12 redevelopment financing act, 1996 PA 381, MCL 125.2651 to  
13 125.2672, and after the date that the preapproval letter is  
14 issued, except that the date that the preapproval letter is  
15 issued is not a limitation for 1 project the construction of  
16 which began after January 1, 2000 and before January 1, 2001  
17 without the Michigan economic growth authority determining that  
18 the project would not occur in this state without the tax credit  
19 offered under this section as provided in subsection (7), if the  
20 costs of the eligible investment are not otherwise reimbursed to  
21 the taxpayer or paid for on behalf of the taxpayer from any  
22 source other than the taxpayer. The addition of leased  
23 machinery, equipment, or fixtures to eligible property by a  
24 lessee of the machinery, equipment, or fixtures is eligible  
25 investment if the lease of the machinery, equipment, or fixtures  
26 has a minimum term of 10 years or is for the expected useful life  
27 of the machinery, equipment, or fixtures, and if the owner of the



1 machinery, equipment, or fixtures is not the qualified taxpayer  
2 with regard to that machinery, equipment, or fixtures.

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

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

9 (h) "Multiphase project" means a project for which the total  
10 of all credits is \$1,000,000.00 or less for a project approved  
11 under subsection (2) that has more than 1 component, each of  
12 which can be completed separately.

13 (i) "Payroll" and "tax rate" mean those terms as defined in  
14 section 37c.

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

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

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

22 (k) "Project" means the total of all eligible investment on  
23 an eligible property or, for purposes of subsection (5)(b), all  
24 eligible investment on property not in a qualified local  
25 governmental unit that is a facility.

26 (l) "Qualified local governmental unit" means that term as  
27 defined in the obsolete property rehabilitation act, **2000 PA 146,**

1 **MCL 125.2781 to 125.2797.**

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

4 (i) Owns or leases eligible property.

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

21 (n) "Tax liability attributable to authorized business  
22 activity" means the tax liability imposed by this act after the  
23 calculation of credits provided in sections 36, 37, and 39.

24 Enacting section 1. This amendatory act does not take  
25 effect unless House Bill No. 5255 of the 92nd Legislature is  
26 enacted into law.