

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 94**

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:

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CHAPTER 1

Sec. 101. (1) This act shall be known and may be cited as the "Michigan business tax act".

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

9 Sec. 103. A term used in this act and not defined differently
10 shall have the same meaning as when used in comparable context in
11 the laws of the United States relating to federal income taxes in
12 effect for the tax year unless a different meaning is clearly
13 required. A reference in this act to the internal revenue code
14 includes other provisions of the laws of the United States relating
15 to federal income taxes.

16 Sec. 105. (1) "Business activity" means a transfer of legal or
17 equitable title to or rental of property, whether real, personal,
18 or mixed, tangible or intangible, or the performance of services,
19 or a combination thereof, made or engaged in, or caused to be made
20 or engaged in, whether in intrastate, interstate, or foreign
21 commerce, with the object of gain, benefit, or advantage, whether
22 direct or indirect, to the taxpayer or to others, but does not
23 include the services rendered by an employee to his or her employer
24 or services as a director of a corporation. Although an activity of
25 a taxpayer may be incidental to another or to other of his or her
26 business activities, each activity shall be considered to be
27 business engaged in within the meaning of this act.

1 (2) "Business income" means that part of federal taxable
2 income derived from business activity. For a partnership or S
3 corporation, business income includes payments and items of income
4 and expense that are attributable to business activity of the
5 partnership or S corporation and separately reported to the
6 partners or shareholders. For an organization that is a mutual or
7 cooperative electric company exempt under section 501(c)(12) of the
8 internal revenue code, business income equals the organization's
9 excess or deficiency of revenues over expenses as reported to the
10 federal government by those organizations exempt from the federal
11 income tax under the internal revenue code, less capital credits
12 paid to members of that organization, less income attributed to
13 equity in another organization's net income, and less income
14 resulting from a charge approved by a state or federal regulatory
15 agency that is restricted for a specified purpose and refundable if
16 it is not used for the specified purpose. For a tax-exempt person,
17 business income means only that part of federal taxable income
18 derived from unrelated business activity.

19 Sec. 107. (1) "Client" means an entity whose employment
20 operations are managed by a professional employer organization.

21 (2) "Compensation" means all wages, salaries, fees, bonuses,
22 commissions, other payments made in the tax year on behalf of or
23 for the benefit of employees, officers, or directors of the
24 taxpayers, and any earnings that are net earnings from self-
25 employment as defined under section 1402 of the internal revenue
26 code of the taxpayer or a partner or limited liability company
27 member of the taxpayer. Compensation includes, but is not limited

1 to, payments that are subject to or specifically exempt or excepted
2 from withholding under sections 3401 to 3406 of the internal
3 revenue code. Compensation also includes, on a cash or accrual
4 basis consistent with the taxpayer's method of accounting for
5 federal income tax purposes, payments to a pension, retirement, or
6 profit sharing plan other than those payments attributable to
7 unfunded accrued actuarial liabilities, and payments for insurance
8 for which employees are the beneficiaries, including payments under
9 health and welfare and noninsured benefit plans and payment of fees
10 for the administration of health and welfare and noninsured benefit
11 plans. Compensation for a taxpayer licensed under article 25 or 26
12 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and
13 339.2601 to 339.2637, includes payments to an independent
14 contractor licensed under article 25 or 26 of the occupational
15 code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to
16 339.2637. Compensation does not include any of the following:

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

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

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

24 (d) The employer's portion of payments under the federal
25 insurance contributions act, chapter 21 of subtitle C of the
26 internal revenue code, 26 USC 3101 to 3128, the railroad retirement
27 tax act, chapter 22 of subtitle C of the internal revenue code, 26

1 USC 3201 to 3233, and similar social insurance programs.

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

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

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

8 Sec. 109. (1) "Employee" means an employee as defined in
9 section 3401(c) of the internal revenue code. A person from whom an
10 employer is required to withhold for federal income tax purposes is
11 prima facie considered an employee.

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

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

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

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

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

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

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

4 Sec. 111. (1) "Gross receipts" means the entire amount
5 received by the taxpayer from any activity whether in intrastate,
6 interstate, or foreign commerce carried on for direct or indirect
7 gain, benefit, or advantage to the taxpayer or to others except for
8 the following:

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

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

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

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

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

25 (iv) A capital asset of a type that is, or under the internal
26 revenue code will become, eligible for depreciation, amortization,
27 or accelerated cost recovery by the principal for federal income

1 tax purposes, or for real property owned or leased by the
2 principal.

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

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

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

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

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

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

27 (g) Proceeds from any of the following:

- 1 (i) The original issue of stock or equity instruments.
- 2 (ii) The original issue of debt instruments.
- 3 (h) Refunds from returned merchandise.
- 4 (i) Cash and in-kind discounts.
- 5 (j) Trade discounts.
- 6 (k) Federal, state, or local tax refunds.
- 7 (l) Security deposits.
- 8 (m) Payment of the principal portion of loans.
- 9 (n) Value of property received in a like-kind exchange.
- 10 (o) Proceeds from a sale, transaction, exchange, involuntary
11 conversion, or other disposition of tangible, intangible, or real
12 property that is a capital asset as defined in section 1221(a) of
13 the internal revenue code or land that qualifies as property used
14 in the trade or business as defined in section 1231(b) of the
15 internal revenue code, less any gain from the disposition to the
16 extent that gain is included in federal taxable income.
- 17 (p) The proceeds from a policy of insurance, a settlement of a
18 claim, or a judgment in a civil action less any proceeds under this
19 subdivision that are included in federal taxable income.
- 20 (q) For a sales finance company, as defined in section 2 of
21 the motor vehicles sales finance act, 1950 (Ex Sess) PA 27, MCL
22 492.102, and directly or indirectly owned in whole or in part by a
23 motor vehicle manufacturer as of January 1, 2008, amounts realized
24 from the repayment, maturity, sale, or redemption of the principal
25 of a loan, bond, or mutual fund, certificate of deposit, or similar
26 marketable instrument.
- 27 (r) For a sales finance company, as defined in section 2 of

1 the motor vehicles sales finance act, 1950 (Ex Sess) PA 27, MCL
2 492.102, and directly or indirectly owned in whole or in part by a
3 motor vehicle manufacturer as of January 1, 2008, the principal
4 amount received under a repurchase agreement or other transaction
5 properly characterized as a loan.

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

15 (t) For a professional employer organization, any amount
16 charged by a professional employer organization that represents the
17 actual cost of wages and salaries, benefits, worker's compensation,
18 payroll taxes, withholding, or other assessments paid to or on
19 behalf of a covered employee by the professional employer
20 organization under a professional employer arrangement.

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

25 (2) "Insurance company" means an authorized insurer as defined
26 in section 106 of the insurance code of 1956, 1956 PA 218, MCL
27 500.106.

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

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

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

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

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

22 (d) Inventory does not include either of the following:

23 (i) Personal property under lease or principally intended for
24 lease rather than sale.

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

27 (5) "Officer" means an officer of a corporation other than a

1 subchapter S corporation, including all of the following:

2 (a) The chairperson of the board.

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

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

7 Sec. 113. (1) "Partner" means a partner or member of a
8 partnership.

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

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

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

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

27 (b) Paying wages and employment taxes of the employees out of

1 its own accounts.

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

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

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

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

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

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

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

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

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

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

25 (e) For a person included in major groups 15, 16, and 17 under
26 the standard industrial classification code as compiled by the United
27 States department of labor that does not qualify for a credit under

1 section 417, payments to subcontractors for a construction project
2 under a contract specific to that project.

3 (7) "Revenue mile" means the transportation for a
4 consideration of 1 net ton in weight or 1 passenger the distance of
5 1 mile.

6 Sec. 115. (1) "Sale" or "sales" means, except as provided in
7 subdivision (e), the amounts received by the taxpayer as
8 consideration from the following:

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

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

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

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

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

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

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

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

15 Sec. 117. (1) "Tangible personal property" means that term as
16 defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

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

21 (3) "Tax-exempt person" means an organization that is exempt
22 from federal income tax under section 501(a) of the internal
23 revenue code, and a partnership, limited liability company, joint
24 venture, unincorporated association, or other group or combination
25 of organizations acting as a unit if all such organizations are
26 exempt from federal income tax under section 501(a) of the internal
27 revenue code and if all activities of the unit are exclusively

1 related to the charitable, educational, or other purposes or
2 functions that are the basis for the exemption of such
3 organizations from federal income tax, except the following:

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

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

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

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

23 (6) "Unitary business group" means a group of United States
24 persons, other than a foreign operating entity, 1 of which owns or
25 controls, directly or indirectly, more than 50% of the ownership
26 interest with voting rights or ownership interests that confer
27 comparable rights to voting rights of the other United States

1 persons, and that has business activities or operations which
2 result in a flow of value between or among persons included in the
3 unitary business group or has business activities or operations
4 that are integrated with, are dependent upon, or contribute to each
5 other. For purposes of this subsection, flow of value is determined
6 by reviewing the totality of facts and circumstances of business
7 activities and operations.

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

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

14 CHAPTER 2

15 Sec. 200. (1) Except as otherwise provided in this act or
16 under subsection (2), a taxpayer has substantial nexus in this
17 state and is subject to the tax imposed under this act if the
18 taxpayer has a physical presence in this state for a period of more
19 than 1 day during the tax year or if the taxpayer actively solicits
20 sales in this state and has gross receipts of \$350,000.00 or more
21 sourced to this state.

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

25 (3) As used in this section, "physical presence" means any
26 activity conducted by the taxpayer or on behalf of the taxpayer by
27 the taxpayer's employee, agent, or independent contractor acting in

1 a representative capacity. Physical presence does not include the
2 activities of professionals providing services in a professional
3 capacity or other service providers if the activity is not
4 significantly associated with the taxpayer's ability to establish
5 and maintain a market in this state.

6 Sec. 201. (1) Except as otherwise provided in this act, there
7 is levied and imposed a business income tax on every taxpayer with
8 business activity within this state unless prohibited by 15 USC 381
9 to 384. The business income tax is imposed on the business income
10 tax base, after allocation or apportionment to this state, at the
11 rate of 4.95%.

12 (2) The business income tax base means a taxpayer's business
13 income subject to the following adjustments, before allocation or
14 apportionment, and the adjustment in subsection (4) after
15 allocation or apportionment:

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

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

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

27 (d) To the extent included in federal taxable income, deduct

1 dividends and royalties received from persons other than United
2 States persons and foreign operating entities, including, but not
3 limited to, amounts determined under section 78 of the internal
4 revenue code or sections 951 to 964 of the internal revenue code.

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

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

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

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

27 (iii) Is unreasonable as determined by the treasurer, and the

1 taxpayer agrees that the addition would be unreasonable based on
2 the taxpayer's facts and circumstances.

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

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

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

18 (4) Deduct any available business loss incurred after December
19 31, 2007. As used in this subsection, "business loss" means a
20 negative business income taxable amount after allocation or
21 apportionment. The business loss shall be carried forward to the
22 year immediately succeeding the loss year as an offset to the
23 allocated or apportioned business income tax base, then
24 successively to the next 9 taxable years following the loss year or
25 until the loss is used up, whichever occurs first, but for not more
26 than 10 taxable years after the loss year.

27 Sec. 203. (1) Except as otherwise provided in this act, there

1 is levied and imposed a modified gross receipts tax on every
2 taxpayer with nexus as determined under section 200. The modified
3 gross receipts tax is imposed on the modified gross receipts tax
4 base, after allocation or apportionment to this state at a rate of
5 0.80%.

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

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

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

27 (5) Nothing in this act shall prohibit a taxpayer who

1 qualifies for the credit under section 445 or a taxpayer who is a
2 dealer of new or used personal watercraft from collecting the tax
3 imposed under this section in addition to the sales price. The
4 amount remitted to the department for the tax under this section
5 shall not be less than the stated and collected amount.

6 Sec. 207. (1) Except as otherwise provided in this section,
7 the following are exempt from the tax imposed by 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, including any grantor trust
11 established by a municipality with the municipality as the grantor
12 and exempt from federal income tax under the internal revenue code.

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

24 (i) An organization included under section 501(c)(12) or
25 501(c)(16) of the internal revenue code.

26 (ii) An organization exempt under section 501(c)(4) of the
27 internal revenue code that would be exempt under section 501(c)(12)

1 of the internal revenue code except that it failed to meet the
2 requirements in section 501(c)(12) that 85% or more of its income
3 consist of amounts collected from members.

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

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

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

27 (e) Except as provided in subsection (2), a farmers'

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

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

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

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

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

4 (ii) Dissemination of market information.

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

6 (iv) Promotion.

7 (v) Research relating to members' products.

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

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

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

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

1 act, 1937 PA 94, MCL 205.91 to 205.111, and except as otherwise
2 provided in the insurance code of 1956, 1956 PA 218, MCL 500.100 to
3 500.8302.

4 Sec. 237. (1) An insurance company may claim a credit against
5 the tax imposed under this chapter in the following amounts:

6 (a) Amounts paid to the Michigan worker's compensation
7 placement facility pursuant to chapter 23 of the insurance code of
8 1956, 1956 PA 218, MCL 500.2301 to 500.2352.

9 (b) Amounts paid to the Michigan basic property insurance
10 association pursuant to chapter 29 of the insurance code of 1956,
11 1956 PA 218, MCL 500.2901 to 500.2954.

12 (c) Amounts paid to the Michigan automobile insurance
13 placement facility pursuant to chapter 33 of the insurance code of
14 1956, 1956 PA 218, MCL 500.3301 to 500.3390.

15 (d) Amounts paid to the property and casualty guaranty
16 association pursuant to chapter 79 of the insurance code of 1956,
17 1956 PA 218, MCL 500.7901 to 500.7949.

18 (e) Amounts paid to the Michigan life and health guaranty
19 association pursuant to chapter 77 of the insurance code of 1956,
20 1956 PA 218, MCL 500.7701 to 500.7780.

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

24 Sec. 239. (1) An insurance company shall be allowed a credit
25 against the tax imposed under this chapter in an amount equal to
26 50% of the examination fees paid by the insurance company during
27 the tax year pursuant to section 224 of the insurance code of 1956,

1 1956 PA 218, MCL 500.224.

2 (2) An insurance company that does not make any of the
3 payments described under section 237(1)(a) through (d) may claim a
4 credit against the tax imposed under this act as provided under
5 section 403(2), not to exceed 65% of the insurance company's tax
6 liability for the tax year after claiming the other credits allowed
7 by this chapter.

8 Sec. 241. (1) For amounts paid pursuant to section 352 of the
9 worker's disability compensation act of 1969, 1969 PA 317, MCL
10 418.352, an insurance company subject to the worker's disability
11 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, may
12 claim a credit against the tax imposed under this chapter for the
13 tax year in an amount equal to the amount paid during that tax year
14 by the insurance company pursuant to section 352 of the worker's
15 disability compensation act of 1969, 1969 PA 317, MCL 418.352, as
16 certified by the director of the bureau of worker's disability
17 compensation pursuant to section 391(6) of the worker's disability
18 compensation act of 1969, 1969 PA 317, MCL 418.391.

19 (2) An insurance company claiming a credit under this section
20 may claim a portion of the credit allowed under this section equal
21 to the payments made during a calendar quarter pursuant to section
22 352 of the worker's disability compensation act of 1969, 1969 PA
23 317, MCL 418.352, against the estimated tax payments made under
24 section 501. Any credit in excess of an estimated payment shall be
25 refunded to the insurance company on a quarterly basis within 60
26 calendar days after receipt of a properly completed estimated tax
27 return. Any subsequent increase or decrease in the amount claimed

1 for payments made by the insurance company shall be reflected in
2 the amount of the credit taken for the calendar quarter in which
3 the amount of the adjustment is finalized.

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

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

11 Sec. 243. (1) An insurance company is subject to the tax
12 imposed by this chapter 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 505, 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
19 505(4) is not available.

20 (4) For the purpose of calculating an estimated payment
21 required by section 501, the greater of the amount of tax imposed
22 on an insurance company under this chapter or under section 476a of
23 the 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 CHAPTER 2B

7 Sec. 261. As used in this chapter:

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

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

19 (c) "Commercial domicile" means the headquarters of the trade
20 or business, that is the place from which the trade or business is
21 principally managed and directed, or if a financial institution is
22 organized under the laws of a foreign country, of the commonwealth
23 of Puerto Rico, or any territory or possession of the United
24 States, such financial institution's commercial domicile shall be
25 deemed for the purposes of this chapter to be the state of the
26 United States or the District of Columbia from which such financial
27 institution's trade or business in the United States is principally

1 managed and directed. It shall be presumed, subject to rebuttal,
2 that the location from which the financial institution's trade or
3 business is principally managed and directed is the state of the
4 United States or the District of Columbia to which the greatest
5 number of employees are regularly connected or out of which they
6 are working, irrespective of where the services of such employees
7 are performed, as of the last day of the tax year.

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

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

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

15 (i) A bank holding company, a national bank, a state chartered
16 bank, an office of thrift supervision chartered bank or thrift
17 institution, or a savings and loan holding company other than a
18 diversified savings and loan holding company as defined in 12 USC
19 1467a(a) (F).

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

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

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

1 group:

2 (i) Fees, commissions, or other compensation for financial
3 services.

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

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

8 (iv) Interest charged to customers for carrying debit balances
9 of margin accounts.

10 (v) Interest and dividends received.

11 (vi) Any other gross proceeds resulting from the operation as a
12 financial institution.

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

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

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

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

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

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

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

27 (ii) Communicates with his or her customers or other persons.

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

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

12 (o) "Regular place of business" means an office at which the
13 financial institution carries on its business in a regular and
14 systematic manner and which is continuously maintained, occupied,
15 and used by employees of the financial institution. The financial
16 institution shall have the burden of proving that an investment
17 asset or activity or trading asset or activity was properly
18 assigned to a regular place of business outside of this state by
19 demonstrating that the day-to-day decisions regarding the asset or
20 activity occurred at a regular place of business outside this
21 state. Where the day-to-day decisions regarding an investment asset
22 or activity or trading asset or activity occur at more than 1
23 regular place of business and 1 such regular place of business is
24 in this state and 1 such regular place of business is outside this
25 state, such asset or activity shall be considered to be located at
26 the regular place of business of the financial institution where
27 the investment or trading policies or guidelines with respect to

1 the asset or activity are established. Unless the financial
2 institution demonstrates to the contrary, such policies and
3 guidelines shall be presumed to be established at the commercial
4 domicile of the financial institution.

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

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

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

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

22 Sec. 263. (1) Every financial institution with nexus in this
23 state as determined under section 200 is subject to a franchise
24 tax. The franchise tax is imposed upon the tax base of the
25 financial institution as determined under section 265 after
26 allocation or apportionment to this state, at the rate of 0.235%.

27 (2) The tax under this chapter is in lieu of the tax levied

1 and imposed under chapter 2 of this act.

2 Sec. 265. (1) For a financial institution, tax base means the
3 financial institution's net capital. Net capital means equity
4 capital as computed in accordance with generally accepted
5 accounting principles less goodwill arising from purchase
6 accounting adjustments for transactions that occurred after July 1,
7 2007, and the book value of United States obligations and Michigan
8 obligations. If the financial institution does not maintain its
9 books and records in accordance with generally accepted accounting
10 principles, net capital shall be computed in accordance with the
11 books and records used by the financial institution, so long as the
12 method fairly reflects the financial institution's net capital for
13 purposes of the tax levied by this chapter. Net capital does not
14 include up to 125% of the minimum regulatory capitalization
15 requirements of a person subject to the tax imposed under chapter
16 2A.

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

27 (3) For purposes of this section, each of the following

1 applies:

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

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

16 Sec. 267. (1) Except as otherwise provided under this chapter,
17 the tax base of a financial institution whose business activities
18 are confined solely to this state shall be allocated to this state.
19 The tax base of a financial institution whose business activities
20 are subject to tax both within and outside this state shall be
21 apportioned to this state by multiplying the tax base by the gross
22 business factor.

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

26 (a) The financial institution is subject to a business
27 privilege tax, a net income tax, a franchise tax measured by net

1 income, a franchise tax for the privilege of doing business, or a
2 corporate stock tax or a tax of the type imposed under this act in
3 that state.

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

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

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

22 Sec. 269. Gross business in this state of the financial
23 institution is determined as follows:

24 (a) Receipts from credit card receivables including without
25 limitation interest and fees or penalties in the nature of interest
26 from credit card receivables and receipts from fees charged to
27 credit card holders such as annual fees are in this state if the

1 billing address of the credit card holder is located in this state.

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

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

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

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

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

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

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

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

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

6 (i) Interest, dividends, and other income from investment
7 assets and activities and from trading assets and activities,
8 including, but not limited to, investment securities; trading
9 account assets; federal funds; securities purchased and sold under
10 agreements to resell or repurchase; options; futures contracts;
11 forward contracts; notional principal contracts such as swaps;
12 equities; and foreign currency transactions are in this state if
13 the average value of the assets is assigned to a regular place of
14 business of the taxpayer within this state. Interest from federal
15 funds sold and purchased and from securities purchased under resale
16 agreements and securities sold under repurchase agreements are in
17 this state if the average value of the assets is assigned to a
18 regular place of business of the taxpayer within this state. The
19 amount of receipts and other income from investment assets and
20 activities is in this state if assets are assigned to a regular
21 place of business of the taxpayer within this state.

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

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

5 (h) Interest from loans secured by real property is in this
6 state if the property is located in this state, if the property is
7 located both within this state and 1 or more other states and more
8 than 50% of the fair market value of the real property is located
9 in this state, and if more than 50% of the fair market value of the
10 real property is not located within any 1 state but the borrower is
11 located in this state.

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

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

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

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

27 (m) Receipts from the lease of tangible personal property are

1 in this state if the property is located in this state when it is
2 first placed in service by the lessee.

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

8 CHAPTER 3

9 Sec. 301. (1) Except as otherwise provided in this act, each
10 tax base established under this act shall be apportioned in
11 accordance with this chapter.

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

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

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

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

1 tax.

2 Sec. 303. (1) Except as otherwise provided in subsection (2)
3 and section 311, the sales factor is a fraction, the numerator of
4 which is the total sales of the taxpayer in this state during the
5 tax year and the denominator of which is the total sales of the
6 taxpayer everywhere during the tax year.

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

13 Sec. 305. (1) Sales of the taxpayer in this state are
14 determined as follows:

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

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

25 (c) Receipts from the lease or rental of tangible personal
26 property are sales in this state to the extent that the property is
27 utilized in this state. The extent of utilization of tangible

1 personal property in this state is determined by multiplying the
2 receipts by a fraction, the numerator of which is the number of
3 days of physical location of the property in this state during the
4 lease or rental period in the tax year and the denominator of which
5 is the number of days of physical location of the property
6 everywhere during all lease or rental periods in the tax year. If
7 the physical location of the property during the lease or rental
8 period is unknown or cannot be determined, the tangible personal
9 property is utilized in the state in which the property was located
10 at the time the lease or rental payer obtained possession.

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

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

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

14 (a) Except as otherwise provided in this section, all receipts
15 from the performance of services are included in the numerator of
16 the apportionment factor if the recipient of the services receives
17 all of the benefit of the services in this state. If the recipient
18 of the services receives some of the benefit of the services in
19 this state, the receipts are included in the numerator of the
20 apportionment factor in proportion to the extent that the recipient
21 receives benefit of the services in this state.

22 (b) Sales derived from securities brokerage services
23 attributable to this state are determined by multiplying the total
24 dollar amount of receipts from securities brokerage services by a
25 fraction, the numerator of which is the sales of securities
26 brokerage services to customers within this state, and the
27 denominator of which is the sales of securities brokerage services

1 to all customers. Receipts from securities brokerage services
2 include commissions on transactions, the spread earned on principal
3 transactions in which the broker buys or sells from its account,
4 total margin interest paid on behalf of brokerage accounts owned by
5 the broker's customers, and fees and receipts of all kinds from the
6 underwriting of securities. If receipts from brokerage services can
7 be associated with a particular customer, but it is impractical to
8 associate the receipts with the address of the customer, then the
9 address of the customer shall be presumed to be the address of the
10 branch office that generates the transactions for the customer.

11 (c) Sales of services that are derived directly or indirectly
12 from the sale of management, distribution, administration, or
13 securities brokerage services to, or on behalf of, a regulated
14 investment company or its beneficial owners, including receipts
15 derived directly or indirectly from trustees, sponsors, or
16 participants of employee benefit plans that have accounts in a
17 regulated investment company, shall be attributable to this state
18 to the extent that the shareholders of the regulated investment
19 company are domiciled within this state. For purposes of this
20 subdivision, "domicile" means the shareholder's mailing address on
21 the records of the regulated investment company. If the regulated
22 investment company or the person providing management services to
23 the regulated investment company has actual knowledge that the
24 shareholder's primary residence or principal place of business is
25 different than the shareholder's mailing address, then the
26 shareholder's primary residence or principal place of business is
27 the shareholder's domicile. A separate computation shall be made

1 with respect to the receipts derived from each regulated investment
2 company. The total amount of sales attributable to this state shall
3 be equal to the total receipts received by each regulated
4 investment company multiplied by a fraction determined as follows:

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

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

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

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

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

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

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

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

1 property is located within this state, or if more than 50% of the
2 fair market value of the real property is not located within any 1
3 state, if the borrower is located in this state. The determination
4 of whether the real property securing a loan is located within this
5 state shall be made as of the time the original agreement was made
6 and any and all subsequent substitutions of collateral shall be
7 disregarded.

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

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

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

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

27 (9) Loan servicing fees derived from loans of another secured

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

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

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

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

20 (i) Interest, dividends, and other income from investment
21 assets and activities and from trading assets and activities,
22 including, but not limited to, investment securities; trading
23 account assets; federal funds; securities purchased and sold under
24 agreements to resell or repurchase; options; futures contracts;
25 forward contracts; notional principal contracts such as swaps;
26 equities; and foreign currency transactions are in this state if
27 the average value of the assets is assigned to a regular place of

1 business of the taxpayer within this state. Interest from federal
2 funds sold and purchased and from securities purchased under resale
3 agreements and securities sold under repurchase agreements are in
4 this state if the average value of the assets is assigned to a
5 regular place of business of the taxpayer within this state. The
6 amount of receipts and other income from investment assets and
7 activities is in this state if assets are assigned to a regular
8 place of business of the taxpayer within this state.

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

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

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

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

24 (i) 50% of those receipts that either originate or terminate in
25 this state.

26 (ii) 100% of those receipts that both originate and terminate
27 in this state.

1 (c) Receipts attributable to this state of a person whose
2 business activity consists of the transportation both of property
3 and of individuals shall be proportioned based on the total gross
4 receipts for passenger miles and ton mile fractions, separately
5 computed and individually weighted by the ratio of gross receipts
6 from passenger transportation to total gross receipts from all
7 transportation, and by the ratio of gross receipts from freight
8 transportation to total gross receipts from all transportation,
9 respectively.

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

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

21 (12) For purposes of subsection (11), if a taxpayer can show
22 that revenue mile information is not available or cannot be
23 obtained without unreasonable expense to the taxpayer, receipts
24 attributable to this state shall be that portion of the revenue
25 derived from transportation services everywhere performed that the
26 miles of transportation services performed in this state bears to
27 the miles of transportation services performed everywhere. If the

1 department determines that the information required for the
2 calculations under subsection (11) are not available or cannot be
3 obtained without unreasonable expense to the taxpayer, the
4 department may use other available information that in the opinion
5 of the department will result in an equitable allocation of the
6 taxpayer's receipts to this state.

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

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

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

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

24 (15) Receipts from the sale of postpaid telecommunications
25 service are in this state if the origination point of the
26 telecommunication signal, as first identified by the service
27 provider's telecommunication system or as identified by information

1 received by the seller from its service provider if the system used
2 to transport telecommunication signals is not the seller's, is
3 located in this state.

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

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

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

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

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

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

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

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

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

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

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

22 (d) Gross receipts from sales of telecommunication services to
23 other telecommunication service providers for resale shall be
24 sourced to this state using the apportionment concepts used for
25 non-resale receipts of telecommunications services if the
26 information is readily available to make that determination. If the
27 information is not readily available, then the taxpayer may use any

1 other reasonable and consistent method.

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

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

9 Sec. 307. (1) Notwithstanding sections 303 and 305, a spun off
10 corporation that qualified to calculate its sales factor for 7
11 years under section 54 of former 1975 PA 228 may elect to calculate
12 its sales factor under this section for an additional 4 years
13 following those 7 years or 3 years if a taxpayer had an election
14 approved under section 54(1)(e) of former 1975 PA 228. Prior to the
15 end of the first year following the 7 years for which the taxpayer
16 qualified under section 54 of former 1975 PA 228 and if the spun
17 off corporation is not required to file amended returns under
18 section 54(5) of former 1975 PA 228, the spun off corporation may
19 request, in writing, approval from the state treasurer for the
20 election of the 4 additional years under this section. If the
21 taxpayer had an election approved under section 54(1)(e) of former
22 1975 PA 228, the taxpayer is not required to seek approval under
23 this section. The department shall approve the election under this
24 subsection if the requirements of this section are met. The request
25 shall include all of the following:

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

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

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

22 (i) On temporary layoff.

23 (ii) On strike.

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

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

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

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

22 (3) A spun off corporation qualified under subsection (1) or
23 (2) that makes an election and is approved under subsection (1) or
24 (2) calculates its sales factor under section 54 of former 1975 PA
25 228 subject to both of the following:

26 (a) A purchaser in this state under section 52 of former 1975
27 PA 228 does not include a person that purchases from a seller that

1 was included in the purchaser's combined or consolidated annual
2 return under this act but, as a result of the restructuring
3 transaction, ceased to be included in the purchaser's combined or
4 consolidated annual return under this act. This subdivision applies
5 only to sales that originate from a plant located in this state.

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

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

27 (5) The amount of the spun off corporation's investment

1 commitments required under this section shall not be reduced by the
2 amount of any qualifying investments in Michigan plants that are
3 sold.

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

12 (7) As used in this section:

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

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

25 Sec. 309. (1) If the apportionment provisions of this act do
26 not fairly represent the extent of the taxpayer's business activity
27 in this state, the taxpayer may petition for or the treasurer may

1 require the following, with respect to all or a portion of the
2 taxpayer's business activity, if reasonable:

3 (a) Separate accounting.

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

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

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

11 (3) The apportionment provisions of this act shall be
12 rebuttably presumed to fairly represent the business activity
13 attributed to the taxpayer in this state, taken as a whole and
14 without a separate examination of the specific elements of either
15 tax base unless it can be demonstrated that the business activity
16 attributed to the taxpayer in this state is out of all appropriate
17 proportion to the actual business activity transacted in this state
18 and leads to a grossly distorted result or would operate
19 unconstitutionally to tax the extraterritorial activity of the
20 taxpayer.

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

23 Sec. 311. All other receipts not otherwise sourced under this
24 act shall be sourced based on where the benefit to the customer is
25 received or, if where the benefit to the customer is received
26 cannot be determined, to the customer's location.

27

CHAPTER 4

1 Sec. 400. For purposes of this chapter, taxpayer does not
2 include a person subject to the tax imposed under chapter 2A or 2B
3 unless specifically included in the section.

4 Sec. 401. Except as otherwise provided under this act, any
5 unused carryforward for any credit under former 1975 PA 228 may be
6 applied for the 2008 and 2009 tax years and any unused carryforward
7 after 2009 shall be extinguished.

8 Sec. 403. (1) Notwithstanding any other provision in this act,
9 the credits provided in this section shall be taken before any
10 other credit under this act. The total combined credit allowed
11 under this section shall not exceed 65% of the total tax liability
12 imposed under this act.

13 (2) Subject to the limitation in subsection (1), a taxpayer
14 may claim a credit against the tax imposed by this act equal to
15 0.370% of the taxpayer's compensation in this state. For purposes
16 of this subsection, a taxpayer includes a person described in
17 section 239(2) and subject to the tax imposed under chapter 2A. A
18 professional employer organization shall not include payments by
19 the professional employer organization to the officers and
20 employees of a client of the professional employer organization
21 whose employment operations are managed by the professional
22 employer organization. A client may include payments by the
23 professional employer organization to the officers and employees of
24 the client whose employment operations are managed by the
25 professional employer organization.

26 (3) Subject to the limitation in subsection (1), a taxpayer
27 may claim a credit against the tax imposed by this act equal to

1 2.9% multiplied by the result of subtracting the sum of the amounts
2 calculated under subdivisions (d), (e), and (f) from the sum of the
3 amounts calculated under subdivisions (a), (b), and (c):

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

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

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

26 (d) If the cost of tangible assets described in subdivision
27 (a) was paid or accrued in a tax year beginning after December 31,

1 2007, or before December 31, 2007 to the extent the credit is used
2 and at the rate at which the credit was used under former 1975 PA
3 228 or this act, calculate the gross proceeds or benefit derived
4 from the sale or other disposition of the tangible assets minus the
5 gain, multiplied by the apportionment factor for the taxable year
6 as prescribed in chapter 3, and plus the loss, multiplied by the
7 apportionment factor for the taxable year as prescribed in chapter
8 3 from the sale or other disposition reflected in federal taxable
9 income and minus the gain from the sale or other disposition added
10 to the business income tax base in section 201.

11 (e) If the cost of tangible assets described in subdivision
12 (b) was paid or accrued in a tax year beginning after December 31,
13 2007, or before December 31, 2007 to the extent the credit is used
14 and at the rate at which the credit was used under former 1975 PA
15 228 or this act, calculate the gross proceeds or benefit derived
16 from the sale or other disposition of the tangible assets minus the
17 gain and plus the loss from the sale or other disposition reflected
18 in federal taxable income and minus the gain from the sale or other
19 disposition added to the business income tax base in section 201.
20 This amount shall be multiplied by the apportionment factor for the
21 tax year as prescribed in chapter 3.

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

1 gain or loss as of the date of the transfer.

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

6 (5) A taxpayer that claims a credit under this section is not
7 prohibited from claiming a credit under section 405. However, the
8 taxpayer shall not claim a credit under this section and section
9 405 based on the same costs and expenses.

10 Sec. 405. A taxpayer may claim a credit against the tax
11 imposed by this act equal to 1.90% of the taxpayer's research and
12 development expenses in this state in the tax year. The credit
13 under this section combined with the total combined credit allowed
14 under section 403 shall not exceed 75% of the total tax liability
15 imposed under this act. As used in this section, "research and
16 development expenses" means that term as defined in section 41(b)
17 of the internal revenue code.

18 Sec. 407. (1) For the 2008, 2009, and 2010 tax years, a
19 qualified taxpayer that makes an eligible contribution in an
20 eligible business may claim a credit against the tax imposed by the
21 act equal to 30% of the taxpayer's eligible contribution, not to
22 exceed \$300,000.00.

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

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

1 (i) The impact on both the qualified taxpayer and eligible
2 business.

3 (ii) The number of jobs created.

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

5 (i) The structure of investment between the qualified taxpayer
6 and eligible business.

7 (ii) Technology development roles and responsibilities.

8 (iii) A commercialization plan, including intellectual property
9 structure.

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

12 (d) A financial summary.

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

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

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

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

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

25 (a) The taxpayer is an eligible business.

26 (b) The amount of the credit under this section for the
27 eligible business for the designated tax year, which shall be the

1 year in which contribution is made.

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

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

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

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

21 (9) As used in this section:

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

25 (b) "Eligible contribution" means the transfer of pecuniary
26 interest in the form of cash of not less than \$350,000.00, for the
27 purposes of research and development and technology innovation. An

1 eligible contribution does not include contract research.

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

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

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

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

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

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

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

22 Sec. 409. (1) For tax years that begin on or after January 1,
23 2008 and end before January 1, 2013, an eligible taxpayer may claim
24 a credit against the tax imposed by this act equal to the amount of
25 capital expenditures on infield renovation, grandstand and
26 infrastructure upgrades, and any other construction and upgrades,
27 subject to the following:

1 (a) For the 2008 through 2010 tax years, the credit shall not
2 exceed \$1,700,000.00 or the taxpayer's tax liability under this
3 act, whichever is less.

4 (b) For the 2011 tax year, the credit shall not exceed
5 \$1,180,000.00 or the taxpayer's tax liability under this act,
6 whichever is less.

7 (c) For the 2012 tax year, the credit shall not exceed
8 \$650,000.00 or the taxpayer's tax liability under this act,
9 whichever is less.

10 (2) An eligible taxpayer shall expend at least \$25,000,000.00
11 on capital expenditures before January 1, 2011.

12 (3) As used in this section:

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

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

18 (ii) A person who is the lessee and operator of a motorsports
19 entertainment complex or the lessee of the land on which a
20 motorsports entertainment complex is located and operates that
21 motorsports entertainment complex.

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

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

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

1 (ii) Has at least 6 scheduled days of motorsports events each
2 calendar year.

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

9 (iv) Engages in tourism promotion.

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

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

15 (d) "Sanctioning body" means the American motorcycle
16 association (AMA); auto racing club of America (ARCA); championship
17 auto racing teams (CART); grand American road racing association
18 (GRAND AM); Indy racing league (IRL); national association for
19 stock car auto racing (NASCAR); national hot rod association
20 (NHRA); professional sports car racing (PSR); sports car club of
21 America (SCCA); United States auto club (USAC); Michigan state
22 promoters association; or any successor organization or any other
23 nationally or internationally recognized governing body of
24 motorsports that establishes an annual schedule of motorsports
25 events and grants rights to conduct the events, that has
26 established and administers rules and regulations governing all
27 participants involved in the events and all persons conducting the

1 events, and that requires certain liability assurances, including
2 insurance.

3 Sec. 410. (1) For tax years that begin on or after January 1,
4 2008 and end before January 1, 2013, an eligible taxpayer may claim
5 a credit against the tax imposed by this act equal to the
6 following:

7 (a) For the 2008 through 2010 tax years, 65% of the eligible
8 taxpayer's total tax liability imposed under this act not to exceed
9 \$1,700,000.00.

10 (b) For the 2011 tax year, 45% of the eligible taxpayer's
11 total tax liability imposed under this act not to exceed
12 \$1,180,000.00.

13 (c) For the 2012 tax year, 25% of the eligible taxpayer's
14 total tax liability imposed under this act not to exceed
15 \$650,000.00.

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

18 (a) Is, collectively or individually, including through
19 affiliated companies, an owner, operator, manager, licensee,
20 lessee, or tenant of more than 1 facility or stadium, including
21 grounds and ancillary facilities, that has a capacity of at least
22 14,000 patrons and is primarily used for professional sporting
23 events or other entertainment.

24 (b) The owner, operator, manager, licensee, lessee, or tenant
25 as described in subdivision (a) has made a capital investment of
26 not less than \$250,000,000.00, collectively or individually,
27 including through affiliated companies, into the construction cost

1 of a facility or stadium for which the taxpayer qualifies for this
2 credit.

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

10 Sec. 411. A taxpayer whose gross receipts allocated or
11 apportioned to this state are greater than \$350,000.00 but less
12 than \$700,000.00, may claim a credit against the tax imposed under
13 this act equal to the tax liability after the credit under section
14 417 multiplied by a fraction the numerator of which is the
15 difference between the person's allocated or apportioned gross
16 receipts and \$700,000.00 and the denominator of which is
17 \$350,000.00.

18 Sec. 413. (1) Subject to subsection (2), a taxpayer may claim
19 a credit against the tax imposed by this act equal to the
20 following:

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

24 (b) Twenty-three percent of the amount paid for property taxes
25 levied on eligible telephone personal property in the 2008 tax year
26 and 13.5% of the amount paid for property taxes levied on eligible
27 telephone personal property in subsequent tax years.

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

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

7 (a) The statement of assessable personal property prepared
8 pursuant to section 19 of the general property tax act, 1893 PA
9 206, MCL 211.19, identifying the eligible personal property or
10 eligible natural gas pipeline property, or both, for which the
11 credit under subsection (1) is claimed.

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

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

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

22 (4) As used in this section:

23 (a) "Eligible natural gas pipeline property" means natural gas
24 pipelines that are classified as utility personal property under
25 section 34c of the general property tax act, 1893 PA 206, MCL
26 211.34c, and are subject to regulation under the natural gas act,
27 15 USC 717 to 717z.

1 (b) "Eligible personal property" means personal property that
2 is classified as industrial personal property under section 34c of
3 the general property tax act, 1893 PA 206, MCL 211.34c, or in the
4 case of personal property that is subject to 1974 PA 198, MCL
5 207.551 to 207.572, is situated on land classified as industrial
6 real property under section 34c of the general property tax act,
7 1893 PA 206, MCL 211.34c.

8 (c) "Eligible telephone personal property" means personal
9 property of a telephone company subject to the tax levied under
10 1905 PA 282, MCL 207.1 to 207.21.

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

12 (i) Taxes collected under the general property tax act, 1893 PA
13 206, MCL 211.1 to 211.157.

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

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

17 Sec. 415. (1) A taxpayer that meets the criteria under
18 subsection (4) and that is a qualified start-up business that does
19 not have business income for 2 consecutive tax years may claim a
20 credit against the tax imposed under this act for the second of
21 those 2 consecutive tax years and each immediately following
22 consecutive tax year in which the taxpayer does not have business
23 income equal to the taxpayer's tax liability for the tax year in
24 which the taxpayer has no business income. If the taxpayer has
25 business income in any tax year after the credit under this section
26 is claimed, the taxpayer shall claim the credit under this section
27 for any following tax year only if the taxpayer subsequently has no

1 business income for 2 consecutive tax years. The taxpayer may claim
2 the credit for the second of those 2 consecutive tax years and each
3 immediately following consecutive tax year in which the taxpayer
4 does not have business income.

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

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

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

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

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

26 (c) If the taxpayer has no business activity for the third tax
27 year after the last tax year for which a credit under this section

1 is claimed, 33% of the total of all credits claimed under this
2 section.

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

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

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

11 (c) A shareholder of an S corporation.

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

13 (e) An individual who is an owner.

14 (6) As used in this section:

15 (a) "Business income" means business income as defined in
16 section 105 excluding funds received from small business innovation
17 research grants and small business technology transfer programs
18 established under the small business innovation development act of
19 1982, Public Law 97-219, reauthorized under the small business
20 research and development enhancement act, Public Law 102-564, and
21 subsequently reauthorized under the small business reauthorization
22 act of 2000, Public Law 106-554.

23 (b) "Michigan economic development corporation" means the
24 public body corporate created under section 28 of article VII of
25 the state constitution of 1963 and the urban cooperation act of
26 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual
27 interlocal agreement effective April 5, 1999, as amended, between

1 local participating economic development corporations formed under
2 the economic development corporations act, 1974 PA 338, MCL
3 125.1601 to 125.1636, and the Michigan strategic fund.

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

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

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

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

13 (iv) Is not publicly traded.

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

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

20 (B) During the immediately preceding 7 years would have been
21 in 1 of the first 2 years of contribution liability under section
22 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1,
23 MCL 421.19, if the qualified start-up business had employees and
24 was liable under the Michigan employment security act, 1936 (Ex
25 Sess) PA 1, MCL 421.1 to 421.75.

26 (C) During the immediately preceding 7 years would have been
27 in 1 of the first 2 years of contribution liability under section

1 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1,
2 MCL 421.19, if the qualified start-up business had not assumed
3 successor liability under section 15(g) of the Michigan employment
4 security act, 1936 (Ex Sess) PA 1, MCL 421.15.

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

7 Sec. 417. (1) The credit provided in this section shall be
8 taken after the credits under sections 403 and 405 and before any
9 other credit under this act and is available to any taxpayer with
10 gross receipts that do not exceed \$20,000,000.00 and with adjusted
11 business income minus the loss adjustment that does not exceed
12 \$1,300,000.00 as adjusted annually for inflation using the Detroit
13 consumer price index and subject to the following:

14 (a) An individual, a partnership, a limited liability company,
15 or a subchapter S corporation is disqualified if the individual,
16 any 1 partner of the partnership, any 1 member of the limited
17 liability company, or any 1 shareholder of the subchapter S
18 corporation receives more than \$180,000.00 as a distributive share
19 of the adjusted business income minus the loss adjustment of the
20 individual, the partnership, the limited liability company, or the
21 subchapter S corporation.

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

25 (i) Compensation and directors' fees of a shareholder or
26 officer exceed \$180,000.00.

27 (ii) The sum of the following amounts exceeds \$180,000.00:

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

2 (B) The product of the percentage of outstanding ownership or
3 of outstanding stock owned by that shareholder multiplied by the
4 difference between the sum of business income and, to the extent
5 deducted in determining federal taxable income, a carry back or a
6 carry over of a net operating loss or capital loss, minus the loss
7 adjustment.

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

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

22 (ii) If an individual, any 1 partner of the partnership, any 1
23 member of the limited liability company, or any 1 shareholder of
24 the subchapter S corporation receives as a distributive share of
25 adjusted business income minus the loss adjustment of the
26 individual, partnership, limited liability company, or subchapter S
27 corporation; if compensation and directors' fees of a shareholder

1 or officer of a corporation other than a subchapter S corporation
2 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
3 is \$165,000.00 or more but less than \$170,000.00, the credit is
4 reduced by 40%.

5 (iii) If an individual, any 1 partner of the partnership, any 1
6 member of the limited liability company, or any 1 shareholder of
7 the subchapter S corporation receives as a distributive share of
8 adjusted business income minus the loss adjustment of the
9 individual, partnership, limited liability company, or subchapter S
10 corporation; if compensation and directors' fees of a shareholder
11 or officer of a corporation other than a subchapter S corporation
12 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
13 is \$170,000.00 or more but less than \$175,000.00, the credit is
14 reduced by 60%.

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

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

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

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

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

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

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

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

22 (5) If gross receipts exceed \$19,000,000.00, the credit shall
23 be reduced by a fraction, the numerator of which is the amount of
24 gross receipts over \$19,000,000.00 and the denominator of which is
25 \$1,000,000.00. The credit shall not exceed 100% of the tax
26 liability imposed under this act.

27 (6) For a taxpayer 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 (7) 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 this act 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 sections 201
12 and 203.

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

18 (9) 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 105 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) "Detroit consumer price index" means the most
7 comprehensive index of consumer prices available for the Detroit
8 area from the United States department of labor, bureau of labor
9 statistics.

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

25 Sec. 419. (1) For tax years that begin after December 31,
26 2008, a taxpayer that has been issued a tax voucher certificate
27 under section 23 of the Michigan early stage venture investment act

1 of 2003, 2003 PA 296, MCL 125.2253, or any taxpayer to which all or
2 a portion of a tax voucher is transferred pursuant to the Michigan
3 early stage venture investment act of 2003, 2003 PA 296, MCL
4 125.2231 to 125.2263, may use the tax voucher to pay a liability of
5 the taxpayer due under this act.

6 (2) The total amount of all tax voucher certificates that
7 shall be approved under this section, section 37e of former 1975 PA
8 228, and the Michigan early stage venture investment act of 2003,
9 2003 PA 296, MCL 125.2231 to 125.2263, shall not exceed an amount
10 sufficient to allow the Michigan early stage venture investment
11 corporation to raise \$450,000,000.00 for the purposes authorized
12 under the Michigan early stage venture investment act of 2003, 2003
13 PA 296, MCL 125.2231 to 125.2263. The total amount of all tax
14 voucher certificates under this section and section 37e of former
15 1975 PA 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 that 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 taxpayer that may use the tax
5 voucher certificate to pay any liability under and to the extent
6 allowed under section 270 of the income tax act of 1967, 1967 PA
7 281, MCL 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. 421. (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 (e) The Michigan housing and community development fund
7 created in section 3 of the Michigan housing and community
8 development fund act, 2004 PA 479, MCL 125.2823.

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

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

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

27 (5) As used in this section:

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

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

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

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

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

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

19 Sec. 422. (1) Subject to subsection (2), a taxpayer that makes
20 charitable contributions of \$50,000.00 or more during the tax year
21 to either of the following may claim a credit against the tax
22 imposed by this act equal to 50% of the amount by which the
23 aggregate amount of the charitable contributions to either of the
24 following exceeds \$50,000.00:

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

1 institute.

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

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

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

10 Sec. 423. (1) A taxpayer that is an employer that is subject
11 to the worker's disability compensation act of 1969, 1969 PA 317,
12 MCL 418.101 to 418.941, may claim a credit against the tax imposed
13 by this act an amount equal to the amount paid during that tax year
14 by the taxpayer pursuant to section 352 of the worker's disability
15 compensation act of 1969, 1969 PA 317, MCL 418.352, as certified by
16 the director of the bureau of worker's disability compensation
17 pursuant to section 391(6) of the worker's disability compensation
18 act of 1969, 1969 PA 317, MCL 418.391.

19 (2) A taxpayer that claims a credit under this section shall
20 claim a portion of the credit allowed by this section equal to the
21 payments made during a calendar quarter pursuant to section 352 of
22 the worker's disability compensation act of 1969, 1969 PA 317, MCL
23 418.352, against the estimated tax payments made under section 501.
24 Any subsequent increase or decrease in the amount claimed for
25 payments made by the insurer or self-insurer shall be reflected in
26 the amount of the credit taken for the calendar quarter in which
27 the amount of the adjustment is finalized.

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

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

7 Sec. 425. (1) Subject to the applicable limitations in this
8 section, a taxpayer that does not claim a credit under section 261
9 of the income tax act of 1967, 1967 PA 281, MCL 206.261, may claim
10 a credit against the tax imposed by this act equal to 50% of the
11 amount the taxpayer contributed during the tax year to an endowment
12 fund of a community foundation or an education foundation.

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

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

20 (4) A taxpayer may claim a credit under this section for
21 contributions to a community foundation made before the expiration
22 of the 18-month period after a community foundation was
23 incorporated or established during which the community foundation
24 must build an endowment value of \$100,000.00 as provided in
25 subsection (6) (a) (vii). If the community foundation does not reach
26 the required \$100,000.00 endowment value during that 18-month
27 period, contributions to the community foundation made after the

1 date on which the 18-month period expires shall not be used to
2 calculate a credit under this section. At any time after the
3 expiration of the 18-month period under subsection (6)(a)(vii) that
4 the community foundation has an endowment value of \$100,000.00, the
5 community foundation may apply to the department for certification
6 under this section.

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

13 (6) As used in this section:

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

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

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

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

27 (iv) Is publicly supported as defined by the regulations of the

1 United States department of treasury, 26 CFR 1.170A-9(e)(10). To
2 maintain certification, the community foundation shall submit
3 documentation to the department annually that demonstrates
4 compliance with this subparagraph.

5 (v) Is not a supporting organization as an organization is
6 described in section 509(a)(3) of the internal revenue code and in
7 26 CFR 1.509(a)-4 and 1.509(a)-5.

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

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

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

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

24 (x) For community foundations that have an endowment value of
25 \$1,000,000.00 or more only, the community foundation is subject to
26 an annual independent financial audit and provides copies of that
27 audit to the department not more than 3 months after the completion

1 of the audit. For community foundations that have an endowment
2 value of less than \$1,000,000.00, the community foundation is
3 subject to an annual review and an audit every third year.

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

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

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

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

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

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

26 (v) Meets the requirements for treatment as a single entity
27 contained in the regulations of the United States department of

1 treasury, 26 CFR 1.170A-9(e) (11).

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

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

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

12 Sec. 427. (1) A taxpayer that does not claim a credit under
13 section 261 of the income tax act of 1967, 1967 PA 281, MCL
14 206.261, for a contribution to a shelter for homeless persons, food
15 kitchen, food bank, or other entity, the primary purpose of which
16 is to provide overnight accommodation, food, or meals to persons
17 who are indigent, may claim a credit against the tax imposed by
18 this act equal to 50% of the cash amount the taxpayer contributed
19 during the tax year to a shelter for homeless persons, food
20 kitchen, food bank, or other entity, the primary purpose of which
21 is to provide overnight accommodation, food, or meals to persons
22 who are indigent, if a contribution to that entity is tax
23 deductible for the donor under the internal revenue code.

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

27 (3) If the amount of the credit allowed under this section

1 exceeds the tax liability of the taxpayer for the tax year, that
2 portion of the credit that exceeds the tax liability shall not be
3 refunded.

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

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

15 Sec. 429. (1) A taxpayer may claim a credit against the tax
16 imposed by this act for 1 or more of the following as applicable:

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

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

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

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

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

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

12 (4) A taxpayer that claims a credit under subsection (2) shall
13 attach a copy of each of the following as issued pursuant to the
14 Michigan next energy authority act, 2002 PA 593, MCL 207.821 to
15 207.827, to the annual return required under this act for each tax
16 year in which the taxpayer claims the credit allowed under
17 subsection (2):

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

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

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

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

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

4 (7) As used in this section:

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

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

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

14 (A) Business income.

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

16 (C) The alternative energy business activity factor.

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

27 (c) "Alternative energy marine propulsion system",

1 "alternative energy system", "alternative energy vehicle", and
2 "alternative energy technology" mean those terms as defined in the
3 Michigan next energy authority act, 2002 PA 593, MCL 207.821 to
4 207.827.

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

9 (e) "Baseline tax liability attributable to qualified business
10 activity" means the taxpayer's tax liability for the 2001 tax year
11 under former 1975 PA 228 multiplied by the taxpayer's alternative
12 energy business activity factor for the 2001 tax year under former
13 1975 PA 228. A taxpayer with a 2001 tax year of less than 12 months
14 under former 1975 PA 228 shall annualize the amount calculated
15 under this subdivision as necessary to determine baseline tax
16 liability attributable to qualified business activity that reflects
17 a 12-month period.

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

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

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

25 (i) "Qualified business activity" means research, development,
26 or manufacturing of an alternative energy marine propulsion system,
27 an alternative energy system, an alternative energy vehicle,

1 alternative energy technology, or renewable fuel.

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

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

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

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

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

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

27 (n) "Tax liability attributable to qualified business

1 activity" means the taxpayer's tax liability multiplied by the
2 taxpayer's alternative energy business activity factor for the tax
3 year.

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

8 Sec. 431. (1) For a period of time not to exceed 20 years as
9 determined by the Michigan economic growth authority, a taxpayer
10 that is an authorized business or an eligible taxpayer may claim a
11 credit against the tax imposed by this act equal to the amount
12 certified each year by the Michigan economic growth authority as
13 follows:

14 (a) For an authorized business for the tax year, an amount not
15 to exceed the payroll of the authorized business attributable to
16 employees who perform qualified new jobs as determined under the
17 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
18 207.810, multiplied by the tax rate.

19 (b) For an eligible business as determined under section
20 8(5)(a) of the Michigan economic growth authority act, 1995 PA 24,
21 MCL 207.808, an amount not to exceed 50% of the payroll of the
22 eligible taxpayer attributable to employees who perform retained
23 jobs as determined under the Michigan economic growth authority
24 act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate
25 for the tax year.

26 (c) For an eligible business as determined under section
27 8(5)(b) of the Michigan economic growth authority act, 1995 PA 24,

1 MCL 207.808, an amount not to exceed the payroll of the eligible
2 taxpayer attributable to employees who perform retained jobs as
3 determined under the Michigan economic growth authority act, 1995
4 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate for the
5 tax year.

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

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

13 (a) The taxpayer is an authorized business or an eligible
14 taxpayer.

15 (b) The amount of the credit under this section for the
16 authorized business or eligible taxpayer for the designated tax
17 year.

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

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

1 1975 PA 228.

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

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

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

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

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

3 (10) As used in this section:

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

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

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

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

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

17 (i) The average number of full-time jobs at a facility of an
18 authorized business for a tax year in excess of the average number
19 of full-time jobs the authorized business maintained in this state
20 prior to the expansion or location as that is determined under the
21 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
22 207.810.

23 (ii) The average number of full-time jobs at a facility created
24 by an eligible business within 120 days before becoming an
25 authorized business that is in excess of the average number of
26 full-time jobs that the business maintained in this state 120 days
27 before becoming an authorized business, as determined under the

1 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
2 207.810.

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

7 Sec. 433. (1) A taxpayer that is a business located and
8 conducting business activity within a renaissance zone may claim a
9 credit against the tax imposed by this act for the tax year to the
10 extent and for the duration provided pursuant to the Michigan
11 renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, equal
12 to the lesser of the following:

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

15 (b) Ten percent of adjusted services performed in a designated
16 renaissance zone.

17 (c) For a taxpayer located and conducting business activity in
18 a renaissance zone before December 31, 2002, the product of the
19 following:

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

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

25 (iii) The ratio of the taxpayer's renaissance zone business
26 activity factor for the tax year divided by the taxpayer's
27 renaissance zone business activity factor for its tax year ending

1 in 2007 under section 39b of former 1975 PA 228.

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

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

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

11 (5) A taxpayer that claims a credit under this section shall
12 not employ, pay a speaker fee to, or provide any remuneration,
13 compensation, or consideration to any person employed by the state,
14 the state administrative board created in 1921 PA 2, MCL 17.1 to
15 17.3, or the renaissance zone review board created in 1996 PA 376,
16 MCL 125.2681 to 125.2696, whose employment relates or related in
17 any way to the authorization or enforcement of the credit allowed
18 under this section for any year in which the taxpayer claims a
19 credit under this section and for the 3 years after the last year
20 that a credit is claimed.

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

24 (7) Any portion of the taxpayer's tax liability that is
25 attributable to business activity related to the operation of a
26 casino, and business activity that is associated or affiliated with
27 the operation of a casino, including, but not limited to, the

1 operation of a parking lot, hotel, motel, or retail store, shall
2 not be used to calculate a credit under this section.

3 (8) As used in this section:

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

6 (i) Except as provided in subparagraph (ii), the sum of the
7 taxpayer's payroll for services performed in a designated
8 renaissance zone plus an amount equal to the amount deducted in
9 arriving at federal taxable income for the tax year for
10 depreciation, amortization, or immediate or accelerated write-off
11 for tangible property exempt under section 7ff of the general
12 property tax act, 1893 PA 206, MCL 211.7ff, in the tax year or, for
13 new property, in the immediately following tax year.

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

18 (A) Business income.

19 (B) The ratio of the taxpayer's total sales in this state
20 during the tax year divided by the taxpayer's total sales
21 everywhere during the tax year.

22 (C) The renaissance zone business activity factor.

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

26 (c) "New property" means property that has not been subject
27 to, or exempt from, the collection of taxes under the general

1 property tax act, 1893 PA 206, MCL 211.1 to 211.157, and has not
2 been subject to, or exempt from, ad valorem property taxes levied
3 in another state, except that receiving an exemption as inventory
4 property does not disqualify property.

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

7 (e) "Renaissance zone" means that term as defined in the
8 Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to
9 125.2696.

10 (f) "Renaissance zone business activity factor" means a
11 fraction, the numerator of which is the ratio of the average value
12 of the taxpayer's property located in a designated renaissance zone
13 to the average value of the taxpayer's property in this state plus
14 the ratio of the taxpayer's payroll for services performed in a
15 designated renaissance zone to all of the taxpayer's payroll in
16 this state and the denominator of which is 2.

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

20 Sec. 435. (1) A qualified taxpayer with a rehabilitation plan
21 certified after December 31, 2007 or a qualified taxpayer that has
22 a rehabilitation plan certified before January 1, 2008 under
23 section 39c of former 1975 PA 228 for the rehabilitation of a
24 historic resource for which a certification of completed
25 rehabilitation has been issued after the end of the taxpayer's last
26 tax year may credit against the tax imposed by this act the amount
27 determined pursuant to subsection (2) for the qualified

1 expenditures for the rehabilitation of a historic resource pursuant
2 to the rehabilitation plan in the year in which the certification
3 of completed rehabilitation of the historic resource is issued
4 provided that the certification of completed rehabilitation was
5 issued not more than 5 years after the rehabilitation plan was
6 certified by the Michigan historical center.

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

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

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

27 (3) To be eligible for the credit under this section, the

1 taxpayer shall apply to and receive from the Michigan historical
2 center certification that the historic significance, the
3 rehabilitation plan, and the completed rehabilitation of the
4 historic resource meet the criteria under subsection (6) and either
5 of the following:

6 (a) All of the following criteria:

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

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

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

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

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

1 under section 47(a)(2) of the internal revenue code, additional
2 filing for the credit allowed under this section is not required.

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

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

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

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

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

22 (iii) A contributing resource located within a historic district
23 designated by a local unit pursuant to an ordinance adopted under
24 the local historic districts act, 1970 PA 169, MCL 399.201 to
25 399.215.

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

1 qualified expenditures:

2 (i) The historic resource is located in a designated historic
3 district in a local unit of government with an existing ordinance
4 under the local historic districts act, 1970 PA 169, MCL 399.201 to
5 399.215.

6 (ii) 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
9 has a population of less than 5,000.

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

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

17 (7) If a qualified taxpayer is a partnership, limited
18 liability company, or subchapter S corporation, the qualified
19 taxpayer may assign all or any portion of a credit allowed under
20 this section to its partners, members, or shareholders, based on
21 the partner's, member's, or shareholder's proportionate share of
22 ownership or based on an alternative method approved by the
23 department. A credit assignment under this subsection is
24 irrevocable and shall be made in the tax year in which a
25 certificate of completed rehabilitation is issued. A qualified
26 taxpayer may claim a portion of a credit and assign the remaining
27 credit amount. A partner, member, or shareholder that is an

1 assignee shall not subsequently assign a credit or any portion of a
2 credit assigned to the partner, member, or shareholder under this
3 subsection. A credit amount assigned under this subsection may be
4 claimed against the partner's, member's, or shareholder's tax
5 liability under this act or under the income tax act of 1967, 1967
6 PA 281, MCL 206.1 to 206.532. A credit assignment under this
7 subsection shall be made on a form prescribed by the department.
8 The qualified taxpayer and assignees shall send a copy of the
9 completed assignment form to the department in the tax year in
10 which the assignment is made and attach a copy of the completed
11 assignment form to the annual return required to be filed under
12 this act for that tax year.

13 (8) If the credit allowed under this section for the tax year
14 and any unused carryforward of the credit allowed by this section
15 exceed the taxpayer's tax liability for the tax year, that portion
16 that exceeds the tax liability for the tax year shall not be
17 refunded but may be carried forward to offset tax liability in
18 subsequent tax years for 10 years or until used up, whichever
19 occurs first. An unused carryforward of a credit under section 39c
20 of former 1975 PA 228 that was unused at the end of the last tax
21 year for which former 1975 PA 228 was in effect may be claimed
22 against the tax imposed under this act for the years the
23 carryforward would have been available under section 39c of former
24 1975 PA 228.

25 (9) If the taxpayer sells a historic resource for which a
26 credit was claimed under this section or under section 39c of
27 former 1975 PA 228 less than 5 years after the year in which the

1 credit was claimed, the following percentage of the credit amount
2 previously claimed relative to that historic resource shall be
3 added back to the tax liability of the taxpayer in the year of the
4 sale:

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

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

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

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

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

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

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

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

27 (b) If the revocation is at least 1 year but less than 2 years

1 after the year in which the credit was claimed, 80%.

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

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

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

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

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

14 (12) The qualified taxpayer shall attach all of the following
15 to the qualified taxpayer's annual return required under this act
16 or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to
17 206.532, if applicable, on which the credit is claimed:

18 (a) Certification of completed rehabilitation.

19 (b) Certification of historic significance related to the
20 historic resource and the qualified expenditures used to claim a
21 credit under this section.

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

26 (13) The department of history, arts, and libraries shall
27 promulgate rules to implement this section pursuant to the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328.

3 (14) The total of the credits claimed under this section and
4 section 266 of the income tax act of 1967, 1967 PA 281, MCL
5 206.266, for a rehabilitation project shall not exceed 25% of the
6 total qualified expenditures eligible for the credit under this
7 section for that rehabilitation project.

8 (15) The department of history, arts, and libraries through
9 the Michigan historical center shall report all of the following to
10 the legislature annually for the immediately preceding state fiscal
11 year:

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

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

15 (c) The location of each new and ongoing rehabilitation
16 project.

17 (16) For purposes of this section, taxpayer includes a person
18 subject to the tax imposed under chapter 2B.

19 (17) As used in this section:

20 (a) "Contributing resource" means a historic resource that
21 contributes to the significance of the historic district in which
22 it is located.

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

27 (c) "Historic resource" means a publicly or privately owned

1 historic building, structure, site, object, feature, or open space
2 located within a historic district designated by the national
3 register of historic places, the state register of historic sites,
4 or a local unit acting under the local historic districts act, 1970
5 PA 169, MCL 399.201 to 399.215, or that is individually listed on
6 the state register of historic sites or national register of
7 historic places, and includes all of the following:

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

10 (ii) An income-producing commercial, industrial, or residential
11 resource or a historic resource located within the property
12 boundaries of that resource.

13 (iii) A resource owned by a governmental body, nonprofit
14 organization, or tax-exempt entity that is used primarily by a
15 taxpayer lessee in a trade or business unrelated to the
16 governmental body, nonprofit organization, or tax-exempt entity and
17 that is subject to tax under this act.

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

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

22 (d) "Last tax year" means the taxpayer's tax year under former
23 1975 PA 228 that begins after December 31, 2006 and before January
24 1, 2008.

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

26 (f) "Long-term lease" means a lease term of at least 27.5
27 years for a residential resource or at least 31.5 years for a

1 nonresidential resource.

2 (g) "Michigan historical center" or "center" means the state
3 historic preservation office of the Michigan historical center of
4 the department of history, arts, and libraries or its successor
5 agency.

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

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

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

1 (k) "Qualified taxpayer" means a person that is an assignee
2 under subsection (7) or either owns the resource to be
3 rehabilitated or has a long-term lease agreement with the owner of
4 the historic resource and that has qualified expenditures for the
5 rehabilitation of the historic resource equal to or greater than
6 10% of the state equalized valuation of the property. If the
7 historic resource to be rehabilitated is a portion of a historic or
8 nonhistoric resource, the state equalized valuation of only that
9 portion of the property shall be used for purposes of this
10 subdivision. If the assessor for the local tax collecting unit in
11 which the historic resource is located determines the state
12 equalized valuation of that portion, that assessor's determination
13 shall be used for purposes of this subdivision. If the assessor
14 does not determine that state equalized valuation of that portion,
15 qualified expenditures, for purposes of this subdivision, shall be
16 equal to or greater than 5% of the appraised value as determined by
17 a certified appraiser. If the historic resource to be rehabilitated
18 does not have a state equalized valuation, qualified expenditures
19 for purposes of this subdivision shall be equal to or greater than
20 5% of the appraised value of the resource as determined by a
21 certified appraiser.

22 (l) "Rehabilitation plan" means a plan for the rehabilitation
23 of a historic resource that meets the federal secretary of the
24 interior's standards for rehabilitation and guidelines for
25 rehabilitation of historic buildings under 36 CFR part 67.

26 Sec. 437. (1) Subject to the criteria under this section, a
27 qualified taxpayer that has unused credits or has a preapproval

1 letter issued after December 31, 2007 and before January 1, 2013,
2 or a taxpayer that received a preapproval letter prior to January
3 1, 2008 under section 38g of former 1975 PA 228 and has not
4 received a certificate of completion prior to the taxpayer's last
5 tax year, provided that the project is completed not more than 5
6 years after the preapproval letter for the project is issued, or an
7 assignee under subsection (20), (21), or (22) may claim a credit
8 that has been approved under section 38g of former 1975 PA 228 or
9 under subsection (2), (3), or (4) against the tax imposed by this
10 act equal to either of the following:

11 (a) If the total of all credits for a project is \$1,000,000.00
12 or less, 10% of the cost of the qualified taxpayer's eligible
13 investment paid or accrued by the qualified taxpayer on an eligible
14 property provided that the project does not exceed the amount
15 stated in the preapproval letter. If eligible investment exceeds
16 the amount of eligible investment in the preapproval letter for
17 that project, the total of all credits for the project shall not
18 exceed the total of all credits on the certificate of completion.

19 (b) If the total of all credits for a project is more than
20 \$1,000,000.00 but \$30,000,000.00 or less and, except as provided in
21 subsection (6)(b), the project is located in a qualified local
22 governmental unit, a percentage as determined by the Michigan
23 economic growth authority not to exceed 10% of the cost of the
24 qualified taxpayer's eligible investment as determined under
25 subsection (9) paid or accrued by the qualified taxpayer on an
26 eligible property. If eligible investment exceeds the amount of
27 eligible investment in the preapproval letter for that project, the

1 total of all credits for the project shall not exceed the total of
2 all credits on the certificate of completion.

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

1 authority. If a project is denied under this subsection, a taxpayer
2 is not prohibited from subsequently applying under this subsection
3 for the same project or for another project. If the authority
4 approves a total of all credits for all projects under this
5 subsection of less than \$10,000,000.00 in a calendar year, the
6 authority may carry forward for 1 year only the difference between
7 \$10,000,000.00 and the total of all credits for all projects under
8 this subsection approved in the immediately preceding calendar
9 year. The Michigan economic growth authority shall develop and
10 implement the use of the application form to be used for projects
11 under this subsection. Before the Michigan economic growth
12 authority substantially changes the form, the Michigan economic
13 growth authority shall adopt the changes by resolution and give
14 notice of the proposed resolution to the secretary of the senate,
15 to the clerk of the house of representatives, and to each person
16 who requested from the Michigan economic growth authority in
17 writing or electronically to be notified regarding proposed
18 resolutions. The notice and proposed resolution and all attachments
19 shall be published on the Michigan economic growth authority's
20 internet website. The Michigan economic growth authority shall hold
21 a public hearing not sooner than 14 days and not later than 30 days
22 after the date notice of a proposed resolution is given and offer
23 an opportunity for persons to present data, views, questions, and
24 arguments. The Michigan economic growth authority board members or
25 1 or more persons designated by the Michigan economic growth
26 authority who have knowledge of the subject matter of the proposed
27 resolution shall be present at the public hearing and shall

1 participate in the discussion of the proposed resolution. The
2 Michigan economic growth authority may act on the proposed
3 resolution no sooner than 14 days after the public hearing. The
4 Michigan economic growth authority shall produce a final decision
5 document that describes the basis for its decision. The final
6 resolution and all attachments and the decision document shall be
7 provided to the secretary of the senate and to the clerk of the
8 house of representatives and shall be published on the Michigan
9 economic growth authority's internet website. The notice shall
10 include all of the following:

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

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

14 (c) The address to which written comments may be sent and the
15 date by which comments must be mailed or electronically
16 transmitted, which date shall not be restricted to only before the
17 date of the public hearing.

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

19 (3) If the cost of a project will be for more than
20 \$2,000,000.00 but \$10,000,000.00 or less, a qualified taxpayer
21 shall apply to the Michigan economic growth authority for approval
22 of the project under this subsection. An application under this
23 subsection shall state whether the project is a multiphase project.
24 The chairperson of the Michigan economic growth authority or his or
25 her designee is authorized to approve an application or project
26 under this subsection. Only the chairperson of the Michigan
27 economic growth authority is authorized to deny an application or

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

1 claimed and the maximum total of all credits for the project when
2 the project is completed and a certificate of completion is issued;
3 and the project number assigned by the Michigan economic growth
4 authority. If a project is denied under this subsection, a taxpayer
5 is not prohibited from subsequently applying under this subsection
6 or subsection (4) for the same project or for another project.

7 (4) If the cost of a project will be for more than
8 \$10,000,000.00 and, except as provided in subsection (6)(b), the
9 project is located in a qualified local governmental unit, a
10 qualified taxpayer shall apply to the Michigan economic growth
11 authority for approval of the project. An application under this
12 subsection shall state whether the project is a multiphase project.
13 The Michigan economic growth authority shall approve or deny the
14 project not more than 65 days after receipt of the application. A
15 project under this subsection shall not be approved without the
16 concurrence of the state treasurer. If the Michigan economic growth
17 authority does not approve or deny the application within 65 days
18 after it receives the application, the Michigan economic growth
19 authority shall send the application to the state treasurer. The
20 state treasurer shall approve or deny the application within 5 days
21 after receipt of the application. If the state treasurer does not
22 deny the application within 5 days after receipt of the
23 application, the application is considered approved. The Michigan
24 economic growth authority shall approve a limited number of
25 projects under this subsection during each calendar year as
26 provided in subsection (6). The Michigan economic growth authority
27 shall use the criteria in subsection (7) when approving projects

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

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

27 (6) The Michigan economic growth authority may approve not

1 more than 17 projects each calendar year under subsection (4), and
2 the following limitations apply:

3 (a) Of the 17 projects allowed under this subsection, the
4 total of all credits for each project may be more than
5 \$10,000,000.00 but \$30,000,000.00 or less for up to 2 projects.

6 (b) Of the 17 projects allowed under this subsection, up to 3
7 projects may be approved for projects that are not in a qualified
8 local governmental unit if the property is a facility for which
9 eligible activities are identified in a brownfield plan or, for 1
10 of the 3 projects, if the property is not a facility but is
11 functionally obsolete or blighted, property identified in a
12 brownfield plan. For purposes of this subdivision, a facility
13 includes a building or complex of buildings that was used by a
14 state or federal agency and that is no longer being used for the
15 purpose for which it was used by the state or federal agency.

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

18 (7) The Michigan economic growth authority shall review all
19 applications for projects under subsection (4) 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 the
22 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 authority
24 shall determine that the project would not occur in this state
25 without the tax credit offered under subsection (4). The Michigan
26 economic growth authority shall consider the following criteria to
27 the extent reasonably applicable to the type of project proposed

1 when approving a project under subsection (4), and the chairperson
2 of the Michigan economic growth authority or his or her designee
3 shall consider the following criteria to the extent reasonably
4 applicable to the type of project proposed when approving a project
5 under subsection (2) or (3) or when considering an amendment to a
6 project under subsection (9):

7 (a) The overall benefit to the public.

8 (b) The extent of reuse of vacant buildings and redevelopment
9 of blighted property.

10 (c) Creation of jobs.

11 (d) Whether the eligible property is in an area of high
12 unemployment.

13 (e) The level and extent of contamination alleviated by the
14 qualified taxpayer's eligible activities to the extent known to the
15 qualified taxpayer.

16 (f) The level of private sector contribution.

17 (g) The cost gap that exists between the site and a similar
18 greenfield site as determined by the Michigan economic growth
19 authority.

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

22 (i) Whether the financial statements of the qualified taxpayer
23 indicate that it is financially sound and that the project is
24 economically sound.

25 (j) Any other criteria that the Michigan economic growth
26 authority or the chairperson of the Michigan economic growth
27 authority, as applicable, considers appropriate for the

1 determination of eligibility under subsection (3) or (4).

2 (8) A qualified taxpayer may apply for projects under this
3 section for eligible investment on more than 1 eligible property in
4 a tax year. Each project approved and each project for which a
5 certificate of completion is issued under this section shall be for
6 eligible investment on 1 eligible property.

7 (9) 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 Michigan
11 economic growth authority to amend the project. The total of
12 eligible investment for the project as amended shall not exceed the
13 amount allowed in the preapproval letter for that project.

14 (10) A project may be a multiphase project. If a project is a
15 multiphase project, when each component of the multiphase project
16 is completed, the taxpayer shall submit documentation that the
17 component is complete, an accounting of the cost of the component,
18 and the eligible investment for the component of each taxpayer
19 eligible for a credit for the project of which the component is a
20 part to the Michigan economic growth authority or the designee of
21 the Michigan economic growth authority, who shall verify that the
22 component is complete. When the completion of the component is
23 verified, a component completion certificate shall be issued to the
24 qualified taxpayer which shall state that the taxpayer is a
25 qualified taxpayer, the credit amount for the component, the
26 qualified taxpayer's federal employer identification number or the
27 Michigan treasury number assigned to the taxpayer, and the project

1 number. The taxpayer may assign all or part of the credit for a
2 multiphase project as provided in this section after a component
3 completion certificate for a component is issued. The qualified
4 taxpayer may transfer ownership of or lease the completed component
5 and assign a proportionate share of the credit for the entire
6 project to the qualified taxpayer that is the new owner or lessee.
7 A multiphase project shall not be divided into more than 20
8 components. A component is considered to be completed when a
9 certificate of occupancy has been issued by the local municipality
10 in which the project is located for all of the buildings or
11 facilities that comprise the completed component and a component
12 completion certificate is issued. A credit assigned based on a
13 multiphase project shall be claimed by the assignee in the tax year
14 in which the assignment is made. The total of all credits for a
15 multiphase project shall not exceed the amount stated in the
16 preapproval letter for the project under subsection (1). If all
17 components of a multiphase project are not completed by 10 years
18 after the date on which the preapproval letter for the project was
19 issued, the qualified taxpayer that received the preapproval letter
20 for the project shall pay to the state treasurer, as a penalty, an
21 amount equal to the sum of all credits claimed and assigned for all
22 components of the multiphase project and no credits based on that
23 multiphase project shall be claimed after that date by the
24 qualified taxpayer or any assignee of the qualified taxpayer. The
25 penalty under this subsection is subject to interest on the amount
26 of the credit claimed or assigned determined individually for each
27 component at the rate in section 23(2) of 1941 PA 122, MCL 205.23,

1 beginning on the date that the credit for that component was
2 claimed or assigned. As used in this subsection, "proportionate
3 share" means the same percentage of the total of all credits for
4 the project that the qualified investment for the completed
5 component is of the total qualified investment stated in the
6 preapproval letter for the entire project.

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

1 letter for the project under subsection (2), (3), or (4) as
2 applicable and shall state all of the following:

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

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

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

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

9 (e) The project number.

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

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

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

25 (13) The cost of eligible investment for leased machinery,
26 equipment, or fixtures is the cost of that property had the
27 property been purchased minus the lessor's estimate, made at the

1 time the lease is entered into, of the market value the property
2 will have at the end of the lease. A credit for property described
3 in this subsection is allowed only if the cost of that property had
4 the property been purchased and the lessor's estimate of the market
5 value at the end of the lease are provided to the Michigan economic
6 growth authority.

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

9 (15) Each qualified taxpayer and assignee under subsection
10 (20), (21), or (22) that claims a credit under this section shall
11 attach a copy of the certificate of completion and, if the credit
12 was assigned, a copy of the assignment form provided for under this
13 section to the annual return filed under this act on which the
14 credit under this section is claimed. An assignee of a credit based
15 on a multiphase project shall attach a copy of the assignment form
16 provided for under this section and the component completion
17 certificate provided for in subsection (10) to the annual return
18 filed under this act on which the credit is claimed but is not
19 required to file a copy of a certificate of completion.

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

1 certificate of completion.

2 (17) The credits approved under this section shall be
3 calculated after application of all other credits allowed under
4 this act. The credits under this section shall be calculated before
5 the calculation of the credit under section 431.

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

1 been available under former 1975 PA 228.

2 (19) If a project or credit under this section is for the
3 addition of personal property, if the cost of that personal
4 property is used to calculate a credit under this section, and if
5 the personal property is sold to a purchaser other than an assignee
6 under subsection (20) or disposed of or transferred from eligible
7 property to any other location, the qualified taxpayer that sold,
8 disposed of, or transferred the personal property shall add the
9 same percentage as determined under subsection (1) of the federal
10 basis of the personal property used for determining gain or loss as
11 of the date of the sale, disposition, or transfer to the qualified
12 taxpayer's tax liability under this act after application of all
13 credits under this act for the tax year in which the sale,
14 disposition, or transfer occurs. If a qualified taxpayer has an
15 unused carryforward of a credit under this section, the amount
16 otherwise added under this subsection to the qualified taxpayer's
17 tax liability may instead be used to reduce the qualified
18 taxpayer's carryforward under subsection (18).

19 (20) For credits under this section for projects for which a
20 certificate of completion is issued before January 1, 2006 and
21 except as otherwise provided in this subsection, if a qualified
22 taxpayer pays or accrues eligible investment on or to an eligible
23 property that is leased for a minimum term of 10 years or sold to
24 another taxpayer for use in a business activity, the qualified
25 taxpayer may assign all or a portion of the credit under this
26 section based on that eligible investment to the lessee or
27 purchaser of that eligible property. A credit assignment under this

1 subsection shall only be made to a taxpayer that when the
2 assignment is complete will be a qualified taxpayer. All credit
3 assignments under this subsection are irrevocable and, except for a
4 credit based on a multiphase project, shall be made in the tax year
5 in which the certificate of completion is issued, unless the
6 assignee is an unknown lessee. If a qualified taxpayer wishes to
7 assign all or a portion of its credit to a lessee but the lessee is
8 unknown in the tax year in which the certificate of completion is
9 issued, the qualified taxpayer may delay claiming and assigning the
10 credit until the first tax year in which the lessee is known. A
11 qualified taxpayer may claim a portion of a credit and assign the
12 remaining credit amount. Except as otherwise provided in this
13 subsection, if the qualified taxpayer both claims and assigns
14 portions of the credit, the qualified taxpayer shall claim the
15 portion it claims in the tax year in which the certificate of
16 completion is issued or, for a credit assigned and claimed for a
17 multiphase project before a certificate of completion is issued,
18 the taxpayer shall claim the credit in the year in which the credit
19 is assigned. If a qualified taxpayer assigns all or a portion of
20 the credit and the eligible property is leased to more than 1
21 taxpayer, the qualified taxpayer shall determine the amount of
22 credit assigned to each lessee. A lessee shall not subsequently
23 assign a credit or any portion of a credit assigned under this
24 subsection. A purchaser may subsequently assign a credit or any
25 portion of a credit assigned to the purchaser under this subsection
26 to a lessee of the eligible property. The credit assignment under
27 this subsection shall be made on a form prescribed by the Michigan

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

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

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

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

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

21 (21) Except as otherwise provided in this subsection, for
22 projects for which a certificate of completion is issued before
23 January 1, 2006, and except as otherwise provided in this
24 subsection, if a qualified taxpayer is a partnership, limited
25 liability company, or subchapter S corporation, the qualified
26 taxpayer may assign all or a portion of a credit under this section
27 to its partners, members, or shareholders, based on their

1 proportionate share of ownership of the partnership, limited
2 liability company, or subchapter S corporation or based on an
3 alternative method approved by the Michigan economic growth
4 authority. A credit assignment under this subsection is irrevocable
5 and, except for a credit assignment based on a multiphase project,
6 shall be made in the tax year in which a certificate of completion
7 is issued. A qualified taxpayer may claim a portion of a credit and
8 assign the remaining credit amount. Except as otherwise provided in
9 this subsection, if the qualified taxpayer both claims and assigns
10 portions of the credit, the qualified taxpayer shall claim the
11 portion it claims in the tax year in which a certificate of
12 completion is issued or for a credit assigned and claimed for a
13 multiphase project, before the component completion certificate is
14 issued, the taxpayer shall claim the credit in the year in which
15 the credit is assigned. A partner, member, or shareholder that is
16 an assignee shall not subsequently assign a credit or any portion
17 of a credit assigned under this subsection. The credit assignment
18 under this subsection shall be made on a form prescribed by the
19 Michigan economic growth authority. The qualified taxpayer shall
20 send a copy of the completed assignment form to the Michigan
21 economic growth authority in the tax year in which the assignment
22 is made. A partner, member, or shareholder who is an assignee shall
23 attach a copy of the completed assignment form to its annual return
24 required under this act, for the tax year in which the assignment
25 is made and the assignee first claims a credit, which shall be the
26 same tax year. A credit assignment based on a credit for a
27 component of a multiphase project that is completed before January

1 1, 2006 shall be made under this subsection. In addition to all
2 other procedures under this subsection, the following apply if the
3 total of all credits for a project is more than \$10,000,000.00 but
4 \$30,000,000.00 or less:

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

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

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

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

15 (22) For projects approved under section 38g of former 1975 PA
16 228 for which a certificate of completion is issued on and after
17 January 1, 2006, a qualified taxpayer may assign all or a portion
18 of a credit allowed under section 38g(2), (3), or (33) of former
19 1975 PA 228 under this subsection. A credit assignment under this
20 subsection is irrevocable and, except for a credit assignment based
21 on a multiphase project, shall be made in the tax year in which a
22 certificate of completion is issued unless the assignee is an
23 unknown lessee. If a qualified taxpayer wishes to assign all or a
24 portion of its credit to a lessee but the lessee is unknown in the
25 tax year in which the certificate of completion is issued, the
26 qualified taxpayer may delay claiming and assigning the credit
27 until the first tax year in which the lessee is known. A qualified

1 taxpayer may claim a portion of a credit and assign the remaining
2 credit amount. If the qualified taxpayer both claims and assigns
3 portions of the credit, the qualified taxpayer shall claim the
4 portion it claims in the tax year in which a certificate of
5 completion is issued pursuant to section 38g of former 1975 PA 228.
6 An assignee may subsequently assign a credit or any portion of a
7 credit assigned under this subsection to 1 or more assignees. An
8 assignment under this subsection of a credit allowed under section
9 38g(2), (3), or (33) of former 1975 PA 228 shall not be made after
10 10 years after the first tax year in which that credit under
11 section 38g(2), (3), or (33) of former 1975 PA 228 may be claimed.
12 The credit assignment or a subsequent reassignment under this
13 subsection shall be made on a form prescribed by the Michigan
14 economic growth authority. The qualified taxpayer shall send a copy
15 of the completed assignment form to the Michigan economic growth
16 authority in the tax year in which an assignment or reassignment is
17 made. An assignee or subsequent reassignee shall attach a copy of
18 the completed assignment form to its annual return required under
19 this act, for the tax year in which the assignment or reassignment
20 is made and the assignee or reassignee first claims a credit, which
21 shall be the same tax year. A credit assignment based on a credit
22 for a component of a multiphase project that is completed before
23 January 1, 2006 shall be made under section 38g(18) of former 1975
24 PA 228. A credit assignment based on a credit for a component of a
25 multiphase project that is completed on or after January 1, 2006
26 may be made under this section. In addition to all other procedures
27 and requirements under this section, the following apply if the

1 total of all credits for a project is more than \$10,000,000.00 but
2 \$30,000,000.00 or less:

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

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

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

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

15 (24) The Michigan economic growth authority may certify a
16 credit under this section based on an agreement entered into prior
17 to January 1, 2008 pursuant to section 38g of former 1975 PA 228.
18 The number of years for which the credit under this subsection may
19 be claimed under this act shall equal the maximum number of years
20 designated in the agreement reduced by the number of years for
21 which a credit had been claimed or could have been claimed under
22 section 38g of former 1975 PA 228.

23 (25) An eligible taxpayer that claims a credit under this
24 section is not prohibited from claiming a credit under section 431.
25 However, the eligible taxpayer shall not claim a credit under this
26 section and section 431 based on the same costs.

27 (26) Eligible investment attributable or related to the

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

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

18 (28) 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 this
23 section.

24 (29) The Michigan economic growth authority annually shall
25 prepare and submit to the house of representatives and senate
26 committees responsible for tax policy and economic development
27 issues a report on the credits under subsection (3). The report

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

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

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

6 (30) For purposes of this section, taxpayer includes a person
7 subject to the tax imposed under chapters 2A and 2B.

8 (31) As used in this section:

9 (a) "Annual credit amount" means the maximum amount that a
10 qualified taxpayer is eligible to claim each tax year for a project
11 for which the total of all credits is more than \$10,000,000.00 but
12 \$30,000,000.00 or less, which shall be 10% of the qualified
13 taxpayer's credit amount approved under subsection (3).

14 (b) "Authority" means a brownfield redevelopment authority
15 created under the brownfield redevelopment financing act, 1996 PA
16 381, MCL 125.2651 to 125.2672.

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

21 (d) "Blighted", "brownfield plan", "eligible activities",
22 "facility", "functionally obsolete", "qualified local governmental
23 unit", and "response activity" mean those terms as defined in the
24 brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651
25 to 125.2672.

26 (e) "Eligible investment" means demolition, construction,
27 restoration, alteration, renovation, or improvement of buildings or

1 site improvements on eligible property and the addition of
2 machinery, equipment, and fixtures to eligible property after the
3 date that eligible activities on that eligible property have
4 started pursuant to a brownfield plan under the brownfield
5 redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672,
6 and after the date that the preapproval letter is issued, if the
7 costs of the eligible investment are not otherwise reimbursed to
8 the taxpayer or paid for on behalf of the taxpayer from any source
9 other than the taxpayer. The addition of leased machinery,
10 equipment, or fixtures to eligible property by a lessee of the
11 machinery, equipment, or fixtures is eligible investment if the
12 lease of the machinery, equipment, or fixtures has a minimum term
13 of 10 years or is for the expected useful life of the machinery,
14 equipment, or fixtures, and if the owner of the machinery,
15 equipment, or fixtures is not the qualified taxpayer with regard to
16 that machinery, equipment, or fixtures.

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

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

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

27 (B) Property that is not in a qualified local governmental

1 unit but is within a downtown development district established
2 under 1975 PA 197, MCL 125.1651 to 125.1681, and is functionally
3 obsolete or blighted, and a component of the project on that
4 eligible property is 1 or more of the following:

5 (I) Infrastructure improvements that directly benefit the
6 eligible property.

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

10 (III) Lead or asbestos abatement.

11 (IV) Site preparation that is not response activity under
12 section 20101 of the natural resources and environmental protection
13 act, 1994 PA 451, MCL 324.20101.

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

17 (i) Eligible property includes parcels that are adjacent or
18 contiguous to the eligible property if the development of the
19 adjacent or contiguous parcels is estimated to increase the
20 captured taxable value of the property or tax reverted property
21 owned or under the control of a land bank fast track authority
22 pursuant to the land bank fast track authority act, 2003 PA 258,
23 MCL 124.751 to 124.774.

24 (iii) Eligible property includes, to the extent included in the
25 brownfield plan, personal property located on the eligible
26 property.

27 (iv) Eligible property does not include qualified agricultural

1 property exempt under section 7ee of the general property tax act,
2 1893 PA 206, MCL 211.7ee, from the tax levied by a local school
3 district for school operating purposes to the extent provided under
4 section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

5 (g) "Last tax year" means the taxpayer's tax year under former
6 1975 PA 228 that begins after December 31, 2006 and before January
7 1, 2008.

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

11 (i) "Multiphase project" means a project approved under this
12 section that has more than 1 component, each of which can be
13 completed separately.

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

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

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

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

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

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

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

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

6 (i) Owns or leases eligible property.

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

22 Sec. 439. (1) A taxpayer may claim a credit against the tax
23 imposed by this act equal to \$1.00 per long ton of qualified low-
24 grade hematite consumed in an industrial or manufacturing process
25 that is the business activity of the taxpayer.

26 (2) If the credit allowed under this section for the tax year
27 and any unused carryforward of the credit allowed under this

1 section exceed the tax liability of the taxpayer for the tax year,
2 the excess shall not be refunded, but may be carried forward as an
3 offset to the tax liability in subsequent tax years for 5 tax years
4 or until the excess credit is used up, whichever occurs first.

5 (3) The credit under this section shall be based on low-grade
6 hematite consumed on and after January 1, 2000.

7 (4) As used in this section:

8 (a) "Consumed in an industrial or manufacturing process" means
9 a process in which low-grade hematite is used as a raw material in
10 the production of pig iron or steel.

11 (b) "Low-grade hematite" means any hematitic iron formation
12 that is not of sufficient quality in its original mineral state to
13 be mined and shipped for the production of pig iron or steel
14 without first being drilled, blasted, crushed, and ground very fine
15 to liberate the iron minerals and for which additional
16 beneficiation and agglomeration are required to produce a product
17 of sufficient quality to be used in the production of pig iron or
18 steel.

19 (c) "Qualified low-grade hematite" means pellets produced from
20 low-grade hematitic iron ore mined in the United States.

21 Sec. 441. (1) For the 2008, 2009, and 2010 tax years, except
22 as otherwise provided under subsection (2), a taxpayer may claim
23 the Michigan entrepreneurial credit equal to 100% of the eligible
24 taxpayer's tax liability imposed by this act attributable to
25 increased employment under subdivision (b) for 3 years if the
26 taxpayer meets all of the following conditions:

27 (a) Had less than \$25,000,000.00 in gross receipts in the

1 immediately preceding tax year. The \$25,000,000.00 amount shall be
2 annually adjusted for inflation using the Detroit consumer price
3 index.

4 (b) Has created in this state or transferred into this state
5 not fewer than 20 new jobs in the immediately preceding tax year.

6 (c) Has made a capital investment in this state of not less
7 than \$1,250,000.00 in the immediately preceding tax year. For
8 purposes of determining eligibility under this subdivision, the
9 capital investment shall not include the purchase of an existing
10 plant or the purchase of existing equipment.

11 (d) Is not a retail establishment as described in major groups
12 52 through 59 and 70 under the standard industrial classification
13 code as compiled by the United States department of labor. However,
14 a restaurant that did not exist, as determined by the treasurer, in
15 this state in the immediately preceding year before which the
16 credit is claimed and that is not a franchise or a part of a
17 unitary business group may qualify for the credit under this
18 section.

19 (2) A taxpayer that is an eligible business as defined in
20 section 407 and that received an eligible contribution as defined
21 in section 407 for which a credit was claimed by another taxpayer
22 may claim the Michigan entrepreneurial credit equal to 100% of the
23 taxpayer's tax liability imposed by this act attributable to the
24 increased employment under subdivision (b) for 3 years if the
25 taxpayer meets all of the following conditions:

26 (a) Had less than \$25,000,000.00 in gross receipts in the
27 immediately preceding tax year.

1 (b) Has increased the number of new jobs in this state by at
2 least 20% from the immediately preceding tax year.

3 (3) An eligible taxpayer may claim the credit under this
4 section on a form prescribed by the department.

5 (4) If the new jobs for which the taxpayer qualifies for this
6 credit are relocated outside of this state within 5 years after
7 claiming the credit under this section or if the taxpayer reduces the
8 employment levels by more than 10% of the jobs for which the taxpayer
9 qualifies for the credit under this section, that taxpayer is liable
10 in an amount equal to the total of all credits received under this
11 section. Any liability under this subsection shall be collected under
12 1941 PA 122, MCL 205.1 to 205.31.

13 (5) A taxpayer's liability attributable to the increased
14 employment is the total liability of the taxpayer multiplied by a
15 fraction the numerator of which is the payroll of the increased jobs
16 of the facility meeting the requirements of this section and the
17 denominator of which is the taxpayer's total payroll in this state.

18 (6) As used in this section:

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

23 (b) "New jobs" means jobs that meet all of the following
24 criteria:

25 (i) Did not exist in this state in the immediately preceding
26 tax year.

27 (ii) Represent an overall increase in full-time equivalent jobs

1 of the taxpayer in this state in the immediately preceding tax
2 year.

3 (iii) Are not jobs into which employees transfer if the
4 employees worked in this state for the taxpayer in other jobs prior
5 to beginning the new jobs.

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

8 Sec. 445. (1) A taxpayer that is a new motor vehicle dealer
9 licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to
10 257.923, may claim a credit against the tax imposed by this act
11 equal to 2% of the amount paid by the taxpayer to acquire new motor
12 vehicle inventory in the tax year, not to exceed \$10,000.00.

13 (2) If the amount of the credit allowed under this section
14 exceeds the tax liability of the taxpayer for the tax year, that
15 excess shall not be refunded and shall not be carried forward as an
16 offset to the tax liability in subsequent tax years.

17 (3) As used in this section, "new motor vehicle inventory"
18 means new motor vehicles or motor vehicle parts.

19 Sec. 447. (1) An eligible taxpayer may claim a credit against
20 the tax imposed by this act equal to 0.535% of the taxpayer's
21 compensation in this state, not to exceed \$4,500,000.00.

22 (2) If the amount of the credit allowed under this section
23 exceeds the tax liability of the taxpayer for the tax year, that
24 excess shall not be refunded and shall not be carried forward as an
25 offset to the tax liability in subsequent tax years.

26 (3) A taxpayer that claims a credit under this section shall
27 not claim a credit under section 449.

1 (4) As used in this section, "eligible taxpayer" means a
2 taxpayer that meets all of the following conditions:

3 (a) Operates at least 17,000,000 square feet of enclosed
4 retail space and 2,000,000 square feet of enclosed warehouse space
5 in this state.

6 (b) Sells all of the following at retail:

7 (i) Fresh, frozen, or processed food, food products, or
8 consumable necessities:

9 (ii) Prescriptions and over-the-counter medications.

10 (iii) Health and beauty care products.

11 (iv) Cosmetics.

12 (v) Pet products.

13 (vi) Carbonated beverages.

14 (vii) Beer, wine, or liquor.

15 (c) Sales of the items listed in subdivision (b) represent
16 more than 35% of the taxpayer's total sales in the tax year.

17 (d) Maintains its headquarters operation in this state.

18 Sec. 449. (1) An eligible taxpayer may claim a credit against
19 the tax imposed by this act equal to 0.125% of the taxpayer's
20 compensation in this state, not to exceed \$300,000.00.

21 (2) If the amount of the credit allowed under this section
22 exceeds the tax liability of the taxpayer for the tax year, that
23 excess shall not be refunded and shall not be carried forward as an
24 offset to the tax liability in subsequent tax years.

25 (3) As used in this section, "eligible taxpayer" means a
26 taxpayer that meets all of the following:

27 (a) Operates at least 2,500,000 square feet of enclosed retail

1 space and 1,400,000 square feet of enclosed warehouse,
2 headquarters, and transportation services in this state.

3 (b) Sells all of the following at retail:

4 (i) Fresh, frozen, or processed food, food products, or
5 consumable necessities.

6 (ii) Prescriptions and over-the-counter medications.

7 (iii) Health and beauty care products.

8 (iv) Cosmetics.

9 (v) Pet products.

10 (vi) Carbonated beverages.

11 (vii) Beer, wine, or liquor.

12 (c) Sales of the items listed in subdivision (b) represent
13 more than 35% of the taxpayer's total sales in the tax year.

14 (d) The taxpayer maintains its headquarters operation in this
15 state.

16 CHAPTER 5

17 Sec. 501. (1) A taxpayer that reasonably expects liability for
18 the tax year to exceed \$800.00 shall file an estimated return and
19 pay an estimated tax for each quarter of the taxpayer's tax year.

20 (2) For taxpayers on a calendar year basis, the quarterly
21 returns and estimated payments shall be made by April 15, July 15,
22 October 15, and January 15. Taxpayers not on a calendar year basis
23 shall file quarterly returns and make estimated payments on the
24 appropriate due date which in the taxpayer's fiscal year
25 corresponds to the calendar year.

26 (3) The estimated payment made with each quarterly return of
27 each tax year shall be for the estimated business income tax base

1 and modified gross receipts tax base for the quarter or 25% of the
2 estimated annual liability. The second, third, and fourth estimated
3 payments in each tax year shall include adjustments, if necessary,
4 to correct underpayments or overpayments from previous quarterly
5 payments in the tax year to a revised estimate of the annual tax
6 liability.

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

9 (a) If the sum of the estimated payments equals at least 85%
10 of the liability and the amount of each estimated payment
11 reasonably approximates the tax liability incurred during the
12 quarter for which the estimated payment was made.

13 (b) For the 2009 tax year and each subsequent tax year, if the
14 preceding year's tax liability under this act was \$20,000.00 or
15 less and if the taxpayer submitted 4 equal installments the sum of
16 which equals the immediately preceding tax year's tax liability.

17 (5) Each estimated return shall be made on a form prescribed
18 by the department and shall include an estimate of the annual tax
19 liability and other information required by the state treasurer.
20 The form prescribed under this subsection may be combined with any
21 other tax reporting form prescribed by the department.

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

26 (7) Payments made under this section shall be a credit against
27 the payment required with the annual tax return required in section

1 505.

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

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

15 Sec. 503. If a taxpayer's tax year to which this act applies
16 ends before December 31, 2008 or if a taxpayer's first tax year is
17 less than 12 months then a taxpayer subject to this act may elect
18 to compute the tax imposed by this act for the portion of that tax
19 year to which this act applies or that first tax year in accordance
20 with 1 of the following methods:

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

26 (b) The tax may be computed by determining the business income
27 tax base and modified gross receipts tax base in the first tax year

1 in accordance with an accounting method satisfactory to the
2 department that reflects the actual business income tax base and
3 modified gross receipts tax base attributable to the period.

4 Sec. 505. (1) An annual or final return shall be filed with
5 the department in the form and content prescribed by the department
6 by the last day of the fourth month after the end of the taxpayer's
7 tax year. Any final liability shall be remitted with this return. A
8 taxpayer, other than a taxpayer subject to the tax imposed under
9 chapter 2A or 2B, whose apportioned or allocated gross receipts are
10 less than \$350,000.00 does not need to file a return or pay the tax
11 imposed under this act.

12 (2) If a taxpayer has apportioned or allocated gross receipts
13 for a tax year of less than 12 months, the amount in subsection (1)
14 shall be multiplied by a fraction, the numerator of which is the
15 number of months in the tax year and the denominator of which is
16 12.

17 (3) The department, upon application of the taxpayer and for
18 good cause shown, may extend the date for filing the annual return.
19 Interest at the rate under section 23(2) of 1941 PA 122, MCL
20 205.23, shall be added to the amount of the tax unpaid for the
21 period of the extension. The treasurer shall require with the
22 application payment of the estimated tax liability unpaid for the
23 tax period covered by the extension.

24 (4) If a taxpayer is granted an extension of time within which
25 to file the federal income tax return for any tax year, the filing
26 of a copy of the request for extension together with a tentative
27 return and payment of an estimated tax with the department by the

1 due date provided in subsection (1) shall automatically extend the
2 due date for the filing of an annual or final return under this act
3 until the last day of the eighth month following the original due
4 date of the return. Interest at the rate under section 23(2) of
5 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
6 unpaid for the period of the extension.

7 Sec. 507. (1) A taxpayer required to file a return under this
8 act may be required to furnish a true and correct copy of any
9 return or portion of any return filed under the provisions of the
10 internal revenue code.

11 (2) A taxpayer shall file an amended return with the
12 department showing any alteration in or modification of a federal
13 income tax return that affects its business income tax base or
14 modified gross receipts tax base under this act. The amended return
15 shall be filed within 120 days after the final determination by the
16 internal revenue service.

17 Sec. 509. (1) At the request of the department, a taxpayer
18 required by the internal revenue code to file or submit an
19 information return of income paid to others shall, to the extent
20 the information is applicable to residents of this state, at the
21 same time file or submit the information in the form and content
22 prescribed to the department.

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

1 Sec. 511. A unitary business group shall file a combined
2 return that includes each United States person, other than a
3 foreign operating entity, that is included in the unitary business
4 group. Each United States person included in a unitary business
5 group or included in a combined return shall be treated as a single
6 person and all transactions between those persons included in the
7 unitary business group shall be eliminated from the business income
8 tax base, modified gross receipts tax base, and the apportionment
9 formula under this act. If a United States person included in a
10 unitary business group or included in a combined return is subject
11 to the tax under chapter 2A or 2B, any business income attributable
12 to that person shall be eliminated from the business income tax
13 base, any modified gross receipts attributable to that person shall
14 be eliminated from the modified gross receipts tax base, and any
15 sales attributable to that person shall be eliminated from the
16 apportionment formula under this act.

17 Sec. 513. (1) The tax imposed by this act shall be
18 administered by the department of treasury pursuant to 1941 PA 122,
19 MCL 205.1 to 205.31, and this act. If a conflict exists between
20 1941 PA 122, MCL 205.1 to 205.31, and this act, the provisions of
21 this act apply.

22 (2) The department shall promulgate rules to implement this
23 act pursuant to the administrative procedures act of 1969, 1969 PA
24 306, MCL 24.201 to 24.328.

25 (3) The department shall prescribe forms for use by taxpayers
26 and may promulgate rules in conformity with this act for the
27 maintenance by taxpayers of records, books, and accounts, and for

1 the computation of the tax, the manner and time of changing or
2 electing accounting methods and of exercising the various options
3 contained in this act, the making of returns, and the
4 ascertainment, assessment, and collection of the tax imposed under
5 this act.

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

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

14 Sec. 515. (1) In fiscal year 2007-2008, \$136,000,000.00 of the
15 revenue collected under this act shall be distributed to the school
16 aid fund and the balance shall be deposited into the general fund.
17 In fiscal year 2008-2009, \$479,000,000.00 of the revenue collected
18 under this act shall be distributed to the school aid fund and the
19 balance shall be deposited into the general fund. For each fiscal
20 year after the 2008-2009 fiscal year, that amount from the
21 immediately preceding fiscal year as adjusted by an amount equal to
22 the growth in the United States consumer price index in the
23 immediately preceding year shall be distributed to the school aid
24 fund and the balance shall be deposited into the general fund.

25 (2) As used in this section, "United States consumer price
26 index" means the United States consumer price index for all urban
27 consumers as defined and reported by the United States department

1 of labor, bureau of labor statistics.

2 Sec. 517. There is appropriated to the department for the
3 2006-2007 state fiscal year the sum of \$1,000,000.00 to begin
4 implementing the requirements of this act. Any portion of this
5 amount under this section that is not expended in the 2006-2007
6 state fiscal year shall not lapse to the general fund but shall be
7 carried forward in a work project account that is in compliance
8 with section 451a of the management and budget act, 1984 PA 431,
9 MCL 18.1451a, for the following state fiscal year.

10 Sec. 519. If a final order of a court of competent
11 jurisdiction for which all rights of appeal have been exhausted or
12 have expired determines that any provision of this act that
13 provides a deduction, credit, or exemption with respect to
14 employment, persons, services, investment, or any other activity
15 that is limited only to this state is unconstitutional or applies
16 to employment, persons, services, investment, or any other activity
17 outside of this state, that credit, deduction, or exemption shall
18 be severed and shall not be in effect for any other tax year for
19 which the final order shall apply, and the remaining provisions of
20 this act shall remain in effect.

21 Sec. 601. (1) For the 2008 fiscal year, except as otherwise
22 provided under subsection (4), if total net cash payments from the
23 tax imposed under this act plus any net cash payments from former
24 1975 PA 228 less any net cash payments made by insurance companies
25 under either act exceed \$2,398,000,00000, 50% of that excess shall
26 be refunded in the immediately succeeding fiscal year as provided
27 in subsection (5) and the remaining 50% shall be deposited into the

1 countercyclical budget and economic stabilization fund pursuant to
2 section 353 of the management and budget act, 1984 PA 431, MCL
3 18.1353.

4 (2) For the 2009 fiscal year, except as otherwise provided
5 under subsection (4), if total net cash payments from the tax
6 imposed under this act, excluding any revenue collected pursuant to
7 chapter 2A, exceed the fiscal year 2009 base, 50% of that excess
8 shall be refunded in the immediately succeeding fiscal year as
9 provided in subsection (5) and the remaining 50% shall be deposited
10 into the countercyclical budget and economic stabilization fund
11 pursuant to section 353 of the management and budget act, 1984 PA
12 431, MCL 18.1353. To calculate the fiscal year 2009 base, multiply
13 \$2,398,000,000.00 by 1.01 and then multiply this product by 2009
14 fiscal year Michigan personal income divided by 2008 fiscal year
15 Michigan personal income.

16 (3) For the 2010 fiscal year, except as otherwise provided
17 under subsection (4), if total net cash payments from the tax
18 imposed under this act, excluding any revenue collected pursuant to
19 chapter 2A, exceed the fiscal year 2010 base, 50% of that excess
20 shall be refunded in the immediately succeeding fiscal year as
21 provided in subsection (5) and the remaining 50% shall be deposited
22 into the countercyclical budget and economic stabilization fund
23 pursuant to section 353 of the management and budget act, 1984 PA
24 431, MCL 18.1353. To calculate the fiscal year 2010 base, multiply
25 \$2,398,000,000.00 by 1.0201 and then multiply this product by 2010
26 fiscal year Michigan personal income divided by 2008 fiscal year
27 Michigan personal income.

1 (4) If the amount of the total net cash payments collected
2 from the tax imposed under this act, excluding any revenue
3 collected pursuant to chapter 2A, exceeds the amount described in
4 the applicable subsection by less than \$5,000,000.00, then all of
5 that excess shall be deposited into the countercyclical budget and
6 economic stabilization fund pursuant to section 353 of the
7 management and budget act, 1984 PA 431, MCL 18.1353.

8 (5) The refund available under subsection (1), (2), or (3)
9 shall be applied pro rata to the taxpayers that made positive net
10 cash payments during the fiscal year. The taxpayer's pro rata share
11 shall be the total amount to be refunded under subsection (1), (2),
12 or (3) multiplied by a fraction the numerator of which is the
13 positive net payments made by the taxpayer during the fiscal year
14 and the denominator of which is the sum of the positive net cash
15 payments made by all taxpayers during the fiscal year.

16 (6) As used in this section:

17 (a) "Fiscal year" means the state fiscal year that commences
18 October 1 and continues through September 30.

19 (b) "Fiscal year Michigan personal income" is the average of
20 the 4 quarterly values for the fiscal year, as published by the
21 United States bureau of economic analysis. Fiscal year personal
22 income for subsection (2) is calculated using the personal income
23 totals published in December 2009. Fiscal year personal income for
24 subsection (3) is calculated using the personal income totals
25 published in December 2010.

26 (c) "Net cash payments" for the fiscal year are equal to cash
27 annual and estimated payments made during the fiscal year less

1 refunds paid during the fiscal year. Refunds paid under this
2 section are not used to reduce net cash payments for purposes of
3 calculating refunds paid out under this section.

4 Enacting section 1. This act takes effect January 1, 2008 and
5 applies to all business activity occurring after December 31, 2007.

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

- 9 (a) House Bill No. 4369.
- 10 (b) House Bill No. 4370.
- 11 (c) House Bill No. 4371.
- 12 (d) House Bill No. 4372.