

SENATE BILL No. 973

December 6, 2007, Introduced by Senators BROWN, RICHARDVILLE, ALLEN, BIRKHOLZ, HUNTER, STAMAS, HARDIMAN, KAHN, CLARK-COLEMAN, CLARKE, GEORGE, BARCIA, PAPPAGEORGE, ANDERSON, THOMAS and SCOTT and referred to the Committee on Commerce and Tourism.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 435 (MCL 208.1435).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 435. (1) A qualified taxpayer with a rehabilitation plan
2 certified after December 31, 2007 or a qualified taxpayer that has
3 a rehabilitation plan certified before January 1, 2008 under
4 section 39c of former 1975 PA 228 for the rehabilitation of an
5 historic resource for which a certification of completed
6 rehabilitation has been issued after the end of the taxpayer's last
7 tax year may credit against the tax imposed by this act the amount
8 determined pursuant to subsection (2) for the qualified
9 expenditures for the rehabilitation of an historic resource

1 pursuant to the rehabilitation plan in the year in which the
2 certification of completed rehabilitation of the historic resource
3 is issued provided that the certification of completed
4 rehabilitation was issued not more than 5 years after the
5 rehabilitation plan was certified by the Michigan historical
6 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 ~~an 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 an 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 an
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 an historic
20 district listed on the national register of historic places or the
21 state register of historic sites.

22 (iii) A contributing resource located within an historic
23 district designated by a local unit pursuant to an ordinance
24 adopted under the local historic districts act, 1970 PA 169, MCL
25 399.201 to 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.~~ **FOR PROJECTS FOR WHICH A CERTIFICATE OF COMPLETED**
24 **REHABILITATION IS ISSUED ON OR AFTER JANUARY 1, 2008, A QUALIFIED**
25 **TAXPAYER MAY ASSIGN ALL OR A PORTION OF A CREDIT ALLOWED UNDER THIS**
26 **SECTION.** A credit assignment under this subsection is irrevocable
27 and shall be made in the tax year in which a certificate of

1 completed rehabilitation is issued. A qualified taxpayer may claim
2 a portion of a credit and assign the remaining credit amount. A
3 ~~partner, member, or shareholder that is an assignee shall not~~
4 ~~subsequently assign a credit or any portion of a credit assigned to~~
5 ~~the partner, member, or shareholder under this subsection.~~ **IF THE**
6 **QUALIFIED TAXPAYER BOTH CLAIMS AND ASSIGNS PORTIONS OF THE CREDIT,**
7 **THE QUALIFIED TAXPAYER SHALL CLAIM THE PORTION IT CLAIMS IN THE TAX**
8 **YEAR IN WHICH A CERTIFICATE OF COMPLETED REHABILITATION IS ISSUED.**
9 **AN ASSIGNEE MAY SUBSEQUENTLY ASSIGN A CREDIT OR ANY PORTION OF A**
10 **CREDIT ASSIGNED UNDER THIS SECTION TO 1 OR MORE ASSIGNEES.** A credit
11 amount assigned under this subsection may be claimed against the
12 ~~partner's, member's, or shareholder's~~ **ASSIGNEES'** tax liability
13 under this act or under the income tax act of 1967, 1967 PA 281,
14 MCL 206.1 to 206.532. A credit assignment **OR SUBSEQUENT**
15 **REASSIGNMENT** under this ~~subsection~~ **SECTION** shall be made on a form
16 prescribed by the department. The qualified taxpayer and assignees
17 shall send a copy of the completed assignment form to the
18 department in the tax year in which the assignment is made and
19 attach a copy of the completed assignment form to the annual return
20 required to be filed under this act for that tax year.

21 (8) If the credit allowed under this section for the tax year
22 and any unused carryforward of the credit allowed by this section
23 exceed the taxpayer's tax liability for the tax year, that portion
24 that exceeds the tax liability for the tax year shall not be
25 refunded but may be carried forward to offset tax liability in
26 subsequent tax years for 10 years or until used up, whichever
27 occurs first. An unused carryforward of a credit under section 39c

1 of former 1975 PA 228 that was unused at the end of the last tax
2 year for which former 1975 PA 228 was in effect may be claimed
3 against the tax imposed under this act for the years the
4 carryforward would have been available under section 39c of former
5 1975 PA 228.

6 ~~—— (9) If the taxpayer sells an historic resource for which a~~
7 ~~credit was claimed under this section or under section 39c of~~
8 ~~former 1975 PA 228 less than 5 years after the year in which the~~
9 ~~credit was claimed, the following percentage of the credit amount~~
10 ~~previously claimed relative to that historic resource shall be~~
11 ~~added back to the tax liability of the taxpayer in the year of the~~
12 ~~sale:~~

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

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

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

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

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

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

26 (9) ~~(10)~~ If a certification of completed rehabilitation is
27 revoked under subsection (5) less than 5 years after the year in

1 which a credit was claimed under this section or under section 39c
2 of former 1975 PA 228, the following percentage of the credit
3 amount previously claimed relative to that historic resource shall
4 be added back to the tax liability of the **QUALIFIED** taxpayer **THAT**
5 **RECEIVED THE CERTIFICATE OF COMPLETED REHABILITATION AND NOT THE**
6 **ASSIGNEE** in the year of the revocation:

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

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

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

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

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

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

20 (10) ~~(11)~~—The department of history, arts, and libraries
21 through the Michigan historical center may impose a fee to cover
22 the administrative cost of implementing the program under this
23 section.

24 (11) ~~(12)~~—The qualified taxpayer shall attach all of the
25 following to the qualified taxpayer's annual return required under
26 this act or under the income tax act of 1967, 1967 PA 281, MCL
27 206.1 to 206.532, if applicable, on which the credit is claimed:

1 (a) Certification of completed rehabilitation.

2 (b) Certification of historic significance related to the
3 historic resource and the qualified expenditures used to claim a
4 credit under this section.

5 (c) A completed assignment form if the qualified taxpayer has
6 assigned any portion of a credit allowed under this section ~~to a~~
7 ~~partner, member, or shareholder~~ or if the taxpayer is an assignee
8 of any portion of a credit allowed under this section.

9 (12) ~~(13)~~—The department of history, arts, and libraries shall
10 promulgate rules to implement this section pursuant to the
11 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
12 24.328.

13 (13) ~~(14)~~—The total of the credits claimed under this section
14 and section 266 of the income tax act of 1967, 1967 PA 281, MCL
15 206.266, for a rehabilitation project shall not exceed 25% of the
16 total qualified expenditures eligible for the credit under this
17 section for that rehabilitation project.

18 (14) ~~(15)~~—The department of history, arts, and libraries
19 through the Michigan historical center shall report all of the
20 following to the legislature annually for the immediately preceding
21 state fiscal year:

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

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

25 (c) The location of each new and ongoing rehabilitation
26 project.

27 (15) ~~(16)~~—For purposes of this section, taxpayer includes a

1 person subject to the tax imposed under chapter 2B.

2 (16) ~~(17)~~—As used in this section:

3 (a) "Contributing resource" means an historic resource that
4 contributes to the significance of the historic district in which
5 it is located.

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

10 (c) "Historic resource" means a publicly or privately owned
11 historic building, structure, site, object, feature, or open space
12 located within an historic district designated by the national
13 register of historic places, the state register of historic sites,
14 or a local unit acting under the local historic districts act, 1970
15 PA 169, MCL 399.201 to 399.215, or that is individually listed on
16 the state register of historic sites or national register of
17 historic places, and includes all of the following:

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

20 (ii) An income-producing commercial, industrial, or residential
21 resource or an historic resource located within the property
22 boundaries of that resource.

23 (iii) A resource owned by a governmental body, nonprofit
24 organization, or tax-exempt entity that is used primarily by a
25 taxpayer lessee in a trade or business unrelated to the
26 governmental body, nonprofit organization, or tax-exempt entity and
27 that is subject to tax under this act.

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

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

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

9 (f) "Long-term lease" means a lease term of at least 27.5
10 years for a residential resource or at least 31.5 years for a
11 nonresidential resource.

12 (g) "Michigan historical center" or "center" means the state
13 historic preservation office of the Michigan historical center of
14 the department of history, arts, and libraries or its successor
15 agency.

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

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

21 (j) "Qualified expenditures" means capital expenditures that
22 qualify for a rehabilitation credit under section 47(a)(2) of the
23 internal revenue code if the taxpayer is eligible for the credit
24 under section 47(a)(2) of the internal revenue code or, if the
25 taxpayer is not eligible for the credit under section 47(a)(2) of
26 the internal revenue code, the qualified expenditures that would
27 qualify under section 47(a)(2) of the internal revenue code except

1 that the expenditures are made to an historic resource that is not
2 eligible for the credit under section 47(a)(2) of the internal
3 revenue code that were paid not more than 5 years after the
4 certification of the rehabilitation plan that included those
5 expenditures was approved by the center, and that were paid after
6 December 31, 1998 for the rehabilitation of an historic resource.
7 Qualified expenditures do not include capital expenditures for
8 nonhistoric additions to an historic resource except an addition
9 that is required by state or federal regulations that relate to
10 historic preservation, safety, or accessibility.

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

1 does not have a state equalized valuation, qualified expenditures
2 for purposes of this subdivision shall be equal to or greater than
3 5% of the appraised value of the resource as determined by a
4 certified appraiser.

5 (l) "Rehabilitation plan" means a plan for the rehabilitation
6 of an historic resource that meets the federal secretary of the
7 interior's standards for rehabilitation and guidelines for
8 rehabilitation of historic buildings under 36 CFR part 67.

9 Enacting section 1. This amendatory act takes effect January
10 1, 2008.