

**SUBSTITUTE FOR
SENATE BILL NO. 857**

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 434 (MCL 208.1434), as amended by 2009 PA 110.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 434. (1) The Michigan economic growth authority is
2 authorized to enter into agreements to provide tax credits
3 available under this section to stimulate the domestic
4 commercialization and affordability of high-power energy batteries,
5 the lack of which today is limiting hybrid, plug-in hybrid battery-
6 electric, and fuel cell vehicle applications, and to help insure
7 that job growth from battery technology and commercial production
8 develops alongside advanced vehicle technology development and
9 renewable power generation initiatives both within and outside the
10 transportation sector.

1 (2) Subject to the limitations provided under this section,
2 for tax years that begin on or after January 1, 2010 and end before
3 January 1, 2015, a taxpayer that has entered into an agreement with
4 the Michigan economic growth authority that provides that the
5 taxpayer will manufacture plug-in traction battery packs in this
6 state may claim a credit against the tax imposed by this act for
7 the manufacture of those plug-in traction battery packs as provided
8 in this section. The Michigan economic growth authority may enter
9 into more than 1 agreement under this section. However, the total
10 number of plug-in traction battery packs eligible for all credits
11 under all agreements allowed under this section shall not exceed
12 the number of plug-in traction battery packs eligible for a credit
13 as provided in this section and at least 1 agreement shall make
14 capital investments of not less than \$200,000,000.00 not later than
15 December 31, 2012. A taxpayer shall not claim a credit under this
16 section for more than 3 years. The total of all credits allowed
17 under this section shall be as follows:

18 (a) For tax years beginning after December 31, 2010 and ending
19 before January 1, 2012, \$500.00 for an equivalent of 4 kilowatt
20 hours of battery capacity plus \$125.00 for each kilowatt hour of
21 battery capacity in excess of 4 kilowatt hours of battery capacity
22 not to exceed \$2,000.00 for each plug-in traction battery pack. The
23 total number of traction battery packs shall not exceed 20,000
24 plug-in traction battery pack units under this subdivision, and the
25 total amount of credits allowed under this subdivision shall not
26 exceed \$40,000,000.00.

27 (b) For tax years beginning after December 31, 2011 and ending

1 before January 1, 2013, \$375.00 for an equivalent of 4 kilowatt
2 hours of battery capacity plus \$93.75 for each kilowatt hour of
3 battery capacity in excess of 4 kilowatt hours of battery capacity
4 not to exceed \$1,500.00 for each plug-in traction battery pack. The
5 total number of traction battery packs shall not exceed 40,000
6 plug-in traction battery pack units under this subdivision, and the
7 total amount of credits allowed under this subdivision shall not
8 exceed \$43,000,000.00. A single taxpayer shall not claim a credit
9 for more than 25,000 plug-in traction battery pack units under this
10 subdivision. The number of battery pack units not used for credits
11 under subdivision (a) may be added to the total number of battery
12 pack units for which a credit is available under this subdivision,
13 and the credits for those units shall be calculated as described in
14 subdivision (a) and shall be in addition to the maximums allowed
15 for any 1 taxpayer under this subdivision or the total limits
16 allowed under this subdivision.

17 (c) For tax years beginning after December 31, 2012 and ending
18 before January 1, 2014, \$375.00 for an equivalent of 4 kilowatt
19 hours of battery capacity plus \$93.75 for each kilowatt hour of
20 battery capacity in excess of 4 kilowatt hours not to exceed
21 \$1,500.00 for each plug-in traction battery pack. The total number
22 of traction battery packs shall not exceed 40,000 plug-in traction
23 battery pack units under this subdivision, and the total amount of
24 credits allowed under this subdivision shall not exceed
25 \$43,000,000.00. A single taxpayer shall not claim a credit for more
26 than 25,000 plug-in traction battery pack units under this
27 subdivision.

1 (d) For tax years beginning after December 31, 2013 and ending
2 before January 1, 2015, \$375.00 for an equivalent of 4 kilowatt
3 hours of battery capacity plus \$93.75 for each kilowatt hour of
4 battery capacity in excess of 4 kilowatt hours not to exceed
5 \$1,500.00 for each plug-in traction battery pack. The total number
6 of traction battery packs shall not exceed 25,000 plug-in traction
7 battery pack units under this subdivision, and the total amount of
8 credits allowed under this subdivision shall not exceed
9 \$9,000,000.00.

10 (3) For tax years that begin on or after January 1, 2012 and
11 subject to the limitations of this subsection, a taxpayer may claim
12 a credit of up to 75% of the qualified expenses for vehicle
13 engineering in this state to support battery integration,
14 prototyping, and launch expenses incurred for tax years that begin
15 on or after January 1, 2009 and end before January 1, 2014. This
16 credit shall not exceed \$15,000,000.00 per year as agreed to and
17 certified by the Michigan economic growth authority. Any expenses
18 for which a credit is claimed under this subsection shall not be
19 included in costs and expenses used for credits available under
20 sections 403 and 405. The Michigan economic growth authority may
21 not authorize more than \$135,000,000.00 in total credits to all
22 taxpayers under this subsection. To claim the credit under this
23 subsection, a taxpayer must manufacture a cumulative total of at
24 least 1,000 motor vehicles that would qualify for the credit under
25 section 30D of the internal revenue code and the credit shall be
26 available to the taxpayer only for the following percentages of the
27 total authorized annual expenses:

1 (a) In a tax year in which the taxpayer has manufactured a
2 cumulative total of at least 1,000 motor vehicles and fewer than
3 2,000 motor vehicles that qualify for the credit under section 30D
4 of the internal revenue code, 20%.

5 (b) In a tax year in which the taxpayer has manufactured a
6 cumulative total of at least 2,000 motor vehicles but fewer than
7 3,000 motor vehicles that qualify for the credit under section 30D
8 of the internal revenue code, 40%.

9 (c) In a tax year in which the taxpayer has manufactured a
10 cumulative total of at least 3,000 motor vehicles but fewer than
11 4,000 motor vehicles that qualify for the credit under section 30D
12 of the internal revenue code, 60%.

13 (d) In a tax year in which the taxpayer has manufactured a
14 cumulative total of at least 4,000 motor vehicles but fewer than
15 5,000 motor vehicles that qualify for the credit under section 30D
16 of the internal revenue code, 80%.

17 (e) In a tax year in which the taxpayer has manufactured a
18 cumulative total of at least 5,000 motor vehicles that qualify for
19 the credit under section 30D of the internal revenue code, 100%.

20 (4) For tax years that begin on or after January 1, 2012 and
21 end before January 1, 2015, a taxpayer that has entered into an
22 agreement with the Michigan economic growth authority that provides
23 that the taxpayer will increase its engineering activities in this
24 state for advanced automotive battery technologies may claim a
25 credit under this subsection. A taxpayer's qualified advanced
26 battery engineering expenses for advanced automotive battery
27 technologies shall exceed those expenses for the taxpayer's 2008

1 fiscal year to qualify for the credit under this subsection. The
2 Michigan economic growth authority may enter into not more than 1
3 agreement for advanced battery engineering credits, and the total
4 value of credits available under this subsection is limited to
5 \$30,000,000.00. The credits under this subsection shall be allowed
6 as follows:

7 (a) Up to 75% of the total dollar amount of the qualified
8 ~~advance~~**ADVANCED** battery engineering expenses of an authorized
9 business incurred during tax years beginning on or after January 1,
10 2009 and ending before January 1, 2014. The taxpayer must submit to
11 the Michigan economic growth authority an affidavit certifying the
12 amount of qualified advanced battery engineering expenses for each
13 year.

14 (b) Notwithstanding any other provision of this section, a
15 taxpayer may claim no more than \$10,000,000.00 in credits under
16 this subsection in any tax year.

17 (c) The credits available under this subsection shall not be
18 allowed if the taxpayer claims credits under subsection (2) for
19 battery pack assembly for the tax year. Notwithstanding this
20 limitation, the credits available under this subsection are in
21 addition to any other incentives which may be authorized under the
22 Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to
23 207.810, for other related or unrelated projects including the
24 vehicle research and development expenses authorized under
25 subsection (3). Any expenses for which a credit is claimed under
26 this subsection shall not be included in costs and expenses used
27 for credits available under sections 403 and 405.

1 (5) A taxpayer that has entered into an agreement with the
2 Michigan economic growth authority may claim a credit equal to 50%
3 of the capital investment expenses for any tax year for the
4 construction of an integrative cell manufacturing facility that
5 includes anode and cathode manufacturing and cell assembly if the
6 taxpayer will create not less than 300 new jobs in this state. Not
7 more than ~~4~~⁵ agreements may be entered into under this section,
8 and the maximum allowable credit under each agreement shall not
9 exceed \$25,000,000.00 per year for no more than 4 years. No credit
10 shall be claimed in a tax year beginning before 2012. However, tax
11 credits may be based on expenses incurred in this state in prior
12 years. The Michigan economic growth authority shall not adopt a
13 resolution authorizing an agreement to provide credits under this
14 subsection after ~~October 1, 2009~~ **MARCH 31, 2010**.

15 (6) A taxpayer that has entered into an agreement with the
16 Michigan economic growth authority may claim a credit equal to 25%
17 of the capital investment expenses for any tax year for the
18 construction of a facility that will produce large scale batteries
19 and manufacture integrated power management, smart control, and
20 storage systems from 500 kilowatts to 100 megawatts if the taxpayer
21 will create not fewer than 500 new jobs in this state and the
22 taxpayer has received federal loan guarantees for a project that
23 employs innovative energy efficiency, renewable energy, and
24 advanced transmission and distribution technologies from the United
25 States department of energy under section 1703 of title XVII of the
26 energy policy act of 2005, 42 USC 16513. Not more than 1 agreement
27 may be entered into under this subsection, and the maximum

allowable credit under the agreement shall not exceed \$25,000,000.00 per year for no more than 4 years. No credit shall be claimed in a tax year beginning before 2012. The Michigan economic growth authority shall not adopt a resolution authorizing an agreement to provide a credit under this subsection after March 1, 2010.

(7) The Michigan economic growth authority shall appoint a review board to advise it about decisions concerning credits under subsection (5). The review board shall be composed of not fewer than 2 independent scientists. Additional experts may be sought on an ad hoc basis to review business plans and addressable markets. In making its recommendations, the review board shall give preference to technologies presenting novel materials, manufacturing, and performance qualities. The review board shall also consider all of the following:

(a) Business activities related to advanced battery technology occurring exclusively in Michigan.

(b) Activities directly related to whole cell production, from materials to large format cells, in Michigan.

(c) Scalability of manufacturing processes that are established, are robust, and address strategic global automotive market requirements.

(8) Credits under this section shall be taken after nonrefundable credits available under this act. If a credit or the sum of credits allowed under this section exceeds the tax liability of the taxpayer for the tax year, the taxpayer may elect to have that portion that exceeds the tax liability of the taxpayer

1 refunded or to have the excess carried forward to offset tax
2 liability in subsequent tax years for 10 years or until used up,
3 whichever occurs first. Amounts carried forward shall not affect
4 the maximum amount of credits that may be claimed in subsequent
5 years.

6 (9) An agreement entered into for tax credits under this
7 section shall specify all of the following:

8 (a) For credits provided under subsection (2), the number of
9 plug-in traction battery packs eligible for a credit for each tax
10 year covered by the period of the agreement and the maximum amount
11 of the credit that may be claimed by the taxpayer in each tax year.

12 (b) If the taxpayer claims a credit under subsection (3), the
13 qualified expenses for vehicle engineering, prototype, and launch
14 costs and the annual and total dollar amount of the credits that
15 may be claimed under subsection (3).

16 (c) If the taxpayer claims a credit under subsection (4), the
17 total dollar amount of the credits that may be claimed under
18 subsection (4).

19 (d) If a taxpayer claims a credit under subsection (5), all of
20 the following:

21 (i) The location of the facility.

22 (ii) The estimated total cost of the facility.

23 (iii) The capital investment expenses that qualify for the
24 credit under subsection (5).

25 (iv) The annual and total dollar amount of the credits that may
26 be claimed under subsection (5).

27 (v) **A REPAYMENT PROVISION THAT IF THE TAXPAYER SUBSEQUENTLY**

1 FAILS TO MEET CERTAIN REQUIREMENTS OF THE AGREEMENT, AS DETERMINED
2 BY THE MICHIGAN ECONOMIC GROWTH AUTHORITY, THE TAXPAYER MAY HAVE
3 ITS CREDIT REDUCED OR TERMINATED OR HAVE A PERCENTAGE OF THE AMOUNT
4 PREVIOUSLY CLAIMED UNDER SUBSECTION (5) ADDED BACK TO THE TAX
5 LIABILITY OF THE TAXPAYER IN THE YEAR THAT THE TAXPAYER FAILS TO
6 COMPLY WITH THE AGREEMENT.

7 (e) If a taxpayer claims a credit under subsection (6), all of
8 the following:

9 (i) The location of the facility.

10 (ii) The estimated total cost of the facility.

11 (iii) The capital investment expenses that qualify for the
12 credit under subsection (6).

13 (iv) The annual and total dollar amount of the credits that may
14 be claimed under subsection (6).

15 (v) The minimum number of new jobs to be created in this state
16 each year to qualify for the credit under subsection (6).

17 (vi) A repayment provision that if the taxpayer subsequently
18 fails to meet the requirements of the agreement, the taxpayer may,
19 as determined by the Michigan economic growth authority, have its
20 credit reduced or terminated or have a percentage of the amount
21 previously claimed under subsection (6) added back to the tax
22 liability of the taxpayer in the year that the taxpayer fails to
23 comply with the agreement.

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

1 credit under this section is claimed. The certificate required
2 under this subsection shall state all of the following:

3 (a) The taxpayer is located in this state and engaged in
4 activity that qualifies for the credit under this section.

5 (b) The taxpayer's federal employer identification number or
6 the Michigan department of treasury number assigned to the taxpayer
7 and, for a taxpayer that is a unitary business group, the federal
8 employer identification number or Michigan department of treasury
9 number assigned to the member of the group engaged in this state in
10 the manufacturing of plug-in traction battery packs.

11 (c) If applicable, the number of plug-in traction battery
12 packs manufactured by the taxpayer during the designated tax year
13 and the amount of the credit under this section for which the
14 taxpayer is allowed to claim for the designated tax year.

15 (d) For credits available under subsections (3), (4), (5), and
16 (6), the amount of the credit available for the tax year and such
17 other information as may be required by the department.

18 (11) As used in this section:

19 (a) "Advanced automotive battery technology" means a
20 rechargeable lithium battery that supports vehicle propulsion or
21 other advanced technologies as may be further defined by the
22 Michigan economic growth authority.

23 (b) "Battery cell" means the basic electrochemical unit that
24 provides a source of electrical energy by direct conversion of
25 chemical energy and consists of an assembly of electrodes,
26 separators, electrolyte, container, and terminals.

27 (c) "Capital investment" means expenses incurred during the

1 tax year and included in an agreement under this section that are
2 associated with facilities, equipment, tooling and engineering, and
3 manufacturing, including salaries, contract services, taxes,
4 utilities, raw materials, and supplies.

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

8 (e) "Plug-in traction battery pack" means an electrochemical
9 energy storage device that meets the following requirements:

10 (i) Has a traction battery capacity of not less than 4.0
11 kilowatt hours.

12 (ii) Is equipped with an electrical plug by means of which it
13 can be energized and recharged when plugged into an external source
14 of power.

15 (iii) Consists of standardized configuration and is mass-
16 produced.

17 (iv) Has been tested and approved by the national highway
18 transportation safety administration as compliant with applicable
19 motor vehicle and motor vehicle equipment safety standards when
20 installed by a mechanic with standardized training in protocols
21 established by the manufacturer as part of a nationwide
22 distribution program.

23 (v) Is installed in a new qualified plug-in electric drive
24 motor vehicle that qualifies for the credit under section 30D of
25 the internal revenue code.

26 (f) "Qualified advanced battery engineering expenses" means
27 that part of a taxpayer's qualified research expenses as defined

1 under section 41(b) of the internal revenue code related to
2 engineering research and development related to advanced automotive
3 battery technology.

4 (g) "Qualified expenses for vehicle engineering" means that
5 part of a taxpayer's expenses for activities within this state
6 related to integrating batteries into a motor vehicle that would
7 qualify for the credit under section 30D of the internal revenue
8 code including such qualified research expenses as defined under
9 section 41(b) of the internal revenue code.

10 (h) "Traction battery capacity" is the number of kilowatt
11 hours measured from a 100% state of charge to a 0% state of charge.