

SENATE BILL No. 1343

May 20, 2010, Introduced by Senators STAMAS and ALLEN and referred to the Committee on Commerce and Tourism.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending section 434 (MCL 208.1434), as amended by 2009 PA 240.

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

1 transportation sector.

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

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

1 (b) For tax years beginning after December 31, 2011 and ending
2 before January 1, 2013, \$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 of battery capacity
5 not to exceed \$1,500.00 for each plug-in traction battery pack. The
6 total number of traction battery packs shall not exceed 40,000
7 plug-in traction battery pack units under this subdivision, and the
8 total amount of credits allowed under this subdivision shall not
9 exceed \$43,000,000.00. A single taxpayer shall not claim a credit
10 for more than 25,000 plug-in traction battery pack units under this
11 subdivision. The number of battery pack units not used for credits
12 under subdivision (a) may be added to the total number of battery
13 pack units for which a credit is available under this subdivision,
14 and the credits for those units shall be calculated as described in
15 subdivision (a) and shall be in addition to the maximums allowed
16 for any 1 taxpayer under this subdivision or the total limits
17 allowed under this subdivision.

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

1 subdivision.

2 (d) For tax years beginning after December 31, 2013 and ending
3 before January 1, 2015, \$375.00 for an equivalent of 4 kilowatt
4 hours of battery capacity plus \$93.75 for each kilowatt hour of
5 battery capacity in excess of 4 kilowatt hours not to exceed
6 \$1,500.00 for each plug-in traction battery pack. The total number
7 of traction battery packs shall not exceed 25,000 plug-in traction
8 battery pack units under this subdivision, and the total amount of
9 credits allowed under this subdivision shall not exceed
10 \$9,000,000.00.

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

1 total authorized annual expenses:

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

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

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

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

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

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

1 technologies shall exceed those expenses for the taxpayer's 2008
2 fiscal year to qualify for the credit under this subsection. The
3 Michigan economic growth authority may enter into not more than 1
4 agreement for advanced battery engineering credits, and the total
5 value of credits available under this subsection is limited to
6 \$30,000,000.00. The credits under this subsection shall be allowed
7 as follows:

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

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

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

1 for credits available under sections 403 and 405.

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

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

1 energy policy act of 2005, 42 USC 16513. Not more than 1 agreement
2 may be entered into under this subsection, and the maximum
3 allowable credit under the agreement shall not exceed
4 \$25,000,000.00 per year for no more than 4 years. No credit shall
5 be claimed in a tax year beginning before 2012. The Michigan
6 economic growth authority shall not adopt a resolution authorizing
7 an agreement to provide a credit under this subsection after March
8 1, 2010.

9 (7) Subject to the limitations under subsection (8), for tax
10 years that begin on or after January 1, 2012 and end before January
11 1, 2017, a taxpayer that has entered into an agreement with the
12 Michigan economic growth authority that provides that the taxpayer
13 will manufacture advanced lithium ion battery packs in this state
14 may claim a credit against the tax imposed by this act for the
15 manufacture of those advanced lithium ion battery packs as follows:

16 (a) For a taxpayer that agrees to make capital investments in
17 this state of not less than \$250,000,000.00, to create at least
18 1,000 new jobs that shall include jobs that are transferred to this
19 state from a foreign country, and to manufacture not less than
20 225,000 advanced lithium ion battery packs in this state, a total
21 credit of not more than \$26,000,000.00 per tax year for no more
22 than 3 tax years. The Michigan economic growth authority shall not
23 adopt a resolution authorizing an agreement under this subdivision
24 after March 1, 2010.

25 (b) For a taxpayer that agrees to make capital investments in
26 this state of not less than \$200,000,000.00 and to create at least
27 300 new jobs, a total credit of not more than \$42,000,000.00 over 4

1 consecutive tax years unless otherwise provided under subsection
2 (10). Unless the Michigan economic growth authority determines that
3 there are previously issued credits authorized under subsection (6)
4 available or that there are credits available under subsection
5 (7)(a) for additional credits under this subdivision, the Michigan
6 economic growth authority shall not adopt a resolution authorizing
7 an agreement under this subdivision after March 1, 2010.

8 (8) Any capital investments made, jobs created, or expenses
9 incurred pursuant to an agreement entered for a credit under
10 subsection (7) or (9) shall be in addition to any other capital
11 investments, jobs, or expenses used for any other credit available
12 under this section and shall not be included or used for a credit
13 available under any subsection other than subsection (7) or (9),
14 respectively. A taxpayer that claims a credit under subsection
15 (7)(a) shall not claim an additional credit under subsection
16 (7)(b). For purposes of subsection (7), "new job" means a full-time
17 job created by a taxpayer related to its advanced lithium ion
18 battery activities, including its battery pack assembly facility, a
19 cell manufacturing facility, and a motor vehicle assembly facility
20 at which the battery pack is installed in a motor vehicle, or
21 related battery engineering, that is in excess of the number of
22 active full-time jobs the taxpayer maintained in this state prior
23 to the effective date of the amendatory act that added this
24 subsection as determined by the Michigan economic growth authority.

25 (9) Subject to the limitations of this subsection, if the
26 Michigan economic growth authority determines that there are
27 previously issued credits authorized under subsection (6)

1 available, then for tax years that begin on or after January 1,
2 2015 and end before January 1, 2017 a taxpayer may claim a credit
3 of up to 75% of the costs incurred during each tax year that begins
4 on or after January 1, 2013 and ends before January 1, 2016 to
5 implement a sourcing program to utilize battery cells from a
6 business that has entered into an agreement under subsection (5)
7 for the construction of an integrative cell manufacturing facility.
8 Costs eligible for the credit under this subsection shall include
9 payments for battery pack and vehicle engineering and associated
10 design or integration including prototyping, facility, equipment or
11 component retooling, and vehicle regulatory certification and shall
12 include costs such as direct labor, purchases of capital equipment
13 at cost, expensed supplies, intellectual property licensing,
14 services, and financing, as determined and certified by the
15 Michigan economic growth authority. Any costs for which a credit is
16 claimed under this subsection shall not be included in costs and
17 expenses used for credits available under sections 403 and 405. The
18 Michigan economic growth authority may enter into more than 1
19 agreement under this subsection. The Michigan economic growth
20 authority shall not authorize more than an amount equal to 25% of
21 the previously issued credits available under subsection (6) as
22 determined under subsection (10) in total credits to all taxpayers
23 under this subsection. A single taxpayer shall not claim a credit
24 of more than \$12,500,000.00 per year for no more than 2 years. To
25 claim the credit under this subsection, a taxpayer must manufacture
26 at least 10,000 motor vehicles in each year a credit is claimed at
27 a facility in this state at which some of the costs eligible for a

1 credit under this subsection are or were incurred. An agreement
2 entered into under this subsection shall contain a repayment
3 provision that if the taxpayer relocates its battery pack assembly
4 facility for which credits are taken under subsection (7) outside
5 of this state during the term of the agreement or subsequently
6 substantially fails to meet the requirements of the agreement, as
7 determined by the Michigan economic growth authority, the taxpayer
8 shall have its credit reduced or terminated or have a percentage of
9 the amount previously claimed under this subsection added back to
10 the tax liability of the taxpayer in the year that the taxpayer
11 fails to comply with the agreement.

12 (10) If the Michigan economic growth authority determines that
13 there are previously issued credits authorized under subsection (6)
14 available, an amount equal to 25% of those previously issued
15 credits may be used by the authority to enter into agreements for
16 which a credit may be claimed under subsection (9) and an amount
17 equal to 25% of those previously issued credits may be used by the
18 authority to enter into additional agreements for which a credit
19 may be claimed under subsection (7) (b). If the Michigan economic
20 growth authority approves a total of less than \$78,000,000.00 in
21 credits under subsection (7) (a), the Michigan economic growth
22 authority may use the difference between \$78,000,000.00 and the
23 total amount of credits approved under subsection (7) (a) to approve
24 additional credits under subsection (7) (b). As used in this
25 subsection and subsections (7) and (9), "previously issued credits"
26 means the total amount of credits authorized by the authority for a
27 taxpayer under subsection (6) that meets all of the following:

1 (a) The taxpayer did not use any or a portion of the credits
2 authorized under the written agreement under subsection (6).

3 (b) The authority determined at a meeting upon a vote of the
4 majority of the members present that the credits previously
5 authorized satisfy subdivision (a).

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

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

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

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

22 (12) Credits under this section shall be taken after
23 nonrefundable credits available under this act. If a credit or the
24 sum of credits allowed under this section exceeds the tax liability
25 of the taxpayer for the tax year, the taxpayer may elect to have
26 that portion that exceeds the tax liability of the taxpayer
27 refunded or to have the excess carried forward to offset tax

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

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

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

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

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

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

20 (i) The location of the facility.

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

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

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

26 (v) A repayment provision that if the taxpayer subsequently
27 substantially fails to meet certain requirements of the agreement,

1 as determined by the Michigan economic growth authority, the
2 taxpayer may have its credit reduced or terminated or have a
3 percentage of the amount previously claimed under subsection (5)
4 added back to the tax liability of the taxpayer in the year that
5 the taxpayer fails to comply with the agreement.

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

8 (i) The location of the facility.

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

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

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

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

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

23 (f) If a taxpayer claims a credit under subsection (7), all of
24 the following:

25 (i) A provision that the taxpayer agrees to make a good faith
26 effort to utilize Michigan suppliers and vendors when purchasing
27 components and services related to the production of advanced

1 lithium ion battery packs for which a credit is claimed in the
2 2012, 2013, and 2014 tax years. For a credit during the 2015 and
3 2016 tax years, a provision that the taxpayer shall utilize cells
4 from a business that has entered into an agreement under subsection
5 (5) for the construction of an integrative cell manufacturing
6 facility.

7 (ii) A repayment provision that if the taxpayer relocates its
8 advanced lithium ion battery pack assembly facility that produces
9 the battery pack units for which the credit is claimed under
10 subsection (7) outside of this state during the term of the
11 agreement or subsequently fails to meet the capital investment or
12 new jobs requirements of the agreement entered into for a credit
13 under subsection (7), as determined by the Michigan economic growth
14 authority, the taxpayer shall have a percentage of the amount
15 previously claimed under subsection (7) added back to the tax
16 liability of the taxpayer in the year that the taxpayer fails to
17 comply with the agreement entered into for a credit under
18 subsection (7) and shall have its credit terminated or reduced
19 prospectively.

20 (iii) The minimum number of advanced lithium ion battery packs
21 to be manufactured to be eligible for a credit for each tax year
22 covered by the period of the agreement and the maximum amount of
23 the credit that may be claimed by the taxpayer in each tax year.

24 (iv) The capital investment that qualifies for the credit under
25 subsection (7).

26 (v) The minimum number of new jobs to be created in this state
27 to qualify for the credit under subsection (7).

1 (14) A taxpayer shall not claim a credit under this section
2 unless the Michigan economic growth authority has issued a
3 certificate to the taxpayer. The taxpayer shall attach the
4 certificate to the annual return filed under this act on which a
5 credit under this section is claimed. The certificate required
6 under this subsection shall state all of the following:

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

9 (b) The taxpayer's federal employer identification number or
10 the Michigan department of treasury number assigned to the taxpayer
11 and, for a taxpayer that is a unitary business group, the federal
12 employer identification number or Michigan department of treasury
13 number assigned to the member of the group engaged in this state in
14 activity that qualifies for a credit under this section.

15 (c) If applicable, the number of plug-in traction battery pack
16 units or advanced lithium ion battery pack units manufactured by
17 the taxpayer during the designated tax year and the amount of the
18 credit under this section for which the taxpayer is allowed to
19 claim for the designated tax year.

20 (d) For credits available under subsections (3), (4), (5),
21 (6), (7), and (9), the amount of the credit available for the tax
22 year and such other information as may be required by the
23 department.

24 (15) As used in this section:

25 (a) "Advanced automotive battery technology" means a
26 rechargeable lithium battery that supports vehicle propulsion or
27 other advanced technologies as may be further defined by the

1 Michigan economic growth authority.

2 (b) "Advanced lithium ion battery pack" means an assembled
3 unit of battery cells containing rechargeable lithium ion chemistry
4 designed and mass-produced for the purpose of transportation,
5 including defense and commercial applications.

6 (c) "Battery cell" means the basic electrochemical unit that
7 provides a source of electrical energy by direct conversion of
8 chemical energy and consists of an assembly of electrodes,
9 separators, electrolyte, container, and terminals.

10 (d) "Capital investment" means expenses incurred during the
11 tax year and included in an agreement under this section that are
12 associated with facilities, equipment, tooling and engineering, and
13 manufacturing, including salaries, contract services, taxes,
14 utilities, raw materials, and supplies.

15 (e) "Michigan economic growth authority" means the Michigan
16 economic growth authority created in the Michigan economic growth
17 authority act, 1995 PA 24, MCL 207.801 to 207.810.

18 (f) "Plug-in traction battery pack" means an electrochemical
19 energy storage device that meets the following requirements:

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

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

25 (iii) Consists of standardized configuration and is mass-
26 produced.

27 (iv) Has been tested and approved by the national highway

1 transportation safety administration as compliant with applicable
2 motor vehicle and motor vehicle equipment safety standards when
3 installed by a mechanic with standardized training in protocols
4 established by the manufacturer as part of a nationwide
5 distribution program.

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

9 (g) "Qualified advanced battery engineering expenses" means
10 that part of a taxpayer's qualified research expenses as defined
11 under section 41(b) of the internal revenue code related to
12 engineering research and development related to advanced automotive
13 battery technology.

14 (h) "Qualified expenses for vehicle engineering" means that
15 part of a taxpayer's expenses for activities within this state
16 related to integrating batteries into a motor vehicle that would
17 qualify for the credit under section 30D of the internal revenue
18 code including such qualified research expenses as defined under
19 section 41(b) of the internal revenue code.

20 (i) "Traction battery capacity" is the number of kilowatt
21 hours measured from a 100% state of charge to a 0% state of charge.