



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 437 (as enacted)
Sponsor: Senator Wayne A. Schmidt
Senate Committee: Economic and Small Business Development
House Committee: Tax Policy

PUBLIC ACT 27 of 2021

Date Completed: 1-7-22

CONTENT

The bill amended the Michigan Business Tax Act to do the following:

- Specify that a qualified taxpayer that was approved for a credit based on a multiphase project by Resolution 2010-219 adopted by the Michigan Economic Growth Authority and issued a preapproval letter on June 10, 2011, has until September 14, 2023, to complete that project and claim the credit without penalty.**
- Specify that a component of a multiphase project is considered completed when a temporary or final certificate of occupancy had been issued.**

The bill took effect June 15, 2021.

Project Extension

Subject to the Act, a qualified taxpayer that has unused credits or has a preapproval letter issued between December 31, 2007, and January 1, 2014, or an assignee designated by the qualified taxpayer, provided that the project is completed in a certain amount of time as described below, may claim a credit against the tax imposed by the Act equal to a certain percentages of the cost of the qualified taxpayer's eligible investment paid or accrued by the qualified taxpayer on an eligible property.

(Generally, the Act defines "eligible investment" as any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property when made after the approval date of a brownfield plan but in any event no earlier than 90 days prior to the date of the preapproval letter. "Eligible property" means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property, to the extent included in the brownfield plan and that meets certain other requirements, such as being located in a qualified local governmental unit and being blighted or functionally obsolete.)

The Act allows the credit to be claimed if the taxpayer has unused credits or a preapproval letter, provided the project is completed no more than five years after the preapproval letter for the project is issued unless extended under the Act. If the project is a multiphase project, the qualified taxpayer must complete it not more than 10 years after the preapproval letter, as amended, if applicable, is issued. The bill specifies that a qualified taxpayer may complete a project as otherwise extended as described below.

(The Act defines "project" as the total of all eligible investment on an eligible property or, for

the purposes of the Act, either all eligible investment on property not in a qualified local governmental unit that is a facility or all eligible investment on property that is not a facility but is functionally obsolete or blighted. "Multiphase project" means a project approved under the Act that has more than one component, each of which can be completed separately.)

If all components of a multiphase project are not completed by 10 years after the date on the preapproval letter for the project was issued, the qualified taxpayer that received the preapproval letter for the project must pay to the State Treasurer, as a penalty, an amount equal to the sum of all credits claimed and assigned for all components of the multiphase project and a taxpayer or an assignee may not claim credits based on that multiphase project claimed after that date. The bill specifies that this provision does not apply as described below.

Under the bill, a qualified taxpayer that was approved for a credit based on a multiphase project by Resolution 2010-219 adopted by the Michigan Economic Growth Authority (MEGA) and issued a preapproval letter on June 10, 2011, has until September 14, 2023, to complete that project and claim the credit without penalty.

The Act also allows a taxpayer to petition MEGA to amend the project and preapproval letter for certain purposes, including extending the duration of time provided to complete the project. The project may not exceed 10 years from the date of the preapproval letter. The bill applies the extension described above to this provision.

Completion Certificate

Under the Act, when each component of a multiphase project is complete, a taxpayer must submit documentation to that effect, and including other information, to MEGA or its designee, who must verify that the component is complete. When the designee verifies the completion, a component completion certificate must be issued to the qualified taxpayer.

The Act specifies that a component is considered to be completed when the local municipality in which the project is located issues a certificate of occupancy for all the buildings or facilities that comprise the completed component and a component completion certificate is issued. The bill instead specifies that a component is considered completed when a *temporary or final* certificate of occupancy has been issued as described above and a component completion certificate is issued.

MCL 208.1437

BACKGROUND

Public Act 24 of 1995 established MEGA within the Michigan Strategic Fund and prescribes its powers and duties. Among other things, the Act grants MEGA the power to authorize eligible businesses to receive tax credits under the Michigan Business Tax Act. According to testimony before the Senate Economic and Small Business Development Committee, MEGA approved Resolution 2010-219 for The Mid Project in Detroit and issued an approval letter for the project on June 11, 2011. The project is a multiphase project, including residential, hotel, and retail phases.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

To the extent that the project approved by Resolution 2010-219 is completed by the original due date, the bill will have no fiscal impact. Under the terms of the bill, if the project is

completed after the original due date but before September 14, 2023, the bill shifts tax credits that would have reduced fiscal year (FY) 2020-21 Michigan Business Tax (MBT) revenue to a later fiscal year, possibly FY 2022-23 or FY 2023-24.

Certificated credits approved under the MBT are expected to be claimed through FY 2031-32, based on the terms of the credits. The Consensus Revenue Estimating Conference estimates if and when certificated credits likely will be claimed. Absent the bill, if the project is not completed by the original due date, the State will pay approximately \$10.0 million less in credits during FY 2020-21. With the bill enacted, if the project is completed by September 14, 2023, the projected credit will be claimed in a later fiscal year, resulting in fewer credits in FY 2020-21, but an increase in the credits that will be paid during a later fiscal year.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.