

# PROMOTION OF ALTERNATIVE ENERGY TECHNOLOGIES THROUGH MICHIGAN TAX CREDITS AND INCENTIVES

By *Marla S. Carew, Esq.*

As this article went to print, Michigan's press coverage of recent tax incentive-driven alternative energy business developments, such as the location of Global Wind Systems, Inc. in Novi, Michigan to take advantage of skilled engineering and manufacturing workers laid off from the auto industry, interest in hiring the same by a Mariah Power/MasTech Manufacturing turbine manufacturing venture located in Manistee, investment of up to \$1 billion in the state by polycrystalline silicon (photovoltaic cell component) maker Hemlock Semiconductor, development of a new Livonia facility by hybrid vehicle maker Fisher Coachworks, LLC, and the commitment of A123 Systems, a maker of lithium-ion batteries, to a new location in Michigan, remains vigorous.<sup>1</sup> Since January 2009, Kalamazoo Valley Community College has been offering Michigan's first "windsmith certification" for wind turbine technicians (small, commercial as well as utility-size) based on a German program recognized as an international standard for such training.<sup>2</sup>

In sobering news, in the days before this article was submitted, Chrysler LLC filed for Chapter 11 bankruptcy protection in a New York court, and numerous traditional Michigan automotive supplier creditors will be impacted by the reorganization. With the state's traditional manufacturing economy in the doldrums and the governor proclaiming that the state's "green" focus is all about "jobs,"<sup>3</sup> it is an appropriate time for a review of Michigan's new, and largely untested, tax credits and incentives directed at bringing more alternative energy business and job creation to the state.

## THE STATE OF ALTERNATIVE ENERGY IN THE STATE OF MICHIGAN CIRCA 2009

At the present time, whether enacted in connection with the Michigan Business Tax Act ("MBT"), NextEnergy Act, or General Property Tax Act, a number of credits and incentives exist to encourage investment and development of alternative energy businesses in Michigan.

### Michigan Business Tax Credits that May Be Available to Alternative Energy Businesses

The following credits against MBT liability are directed at R&D activities, "high technology" companies, or "anchor companies," and may be available to alternative energy companies. However, since these credits, many of which are administered by the Michigan Economic Growth Authority ("MEGA") and realized

through MBT filings, are not directly aimed at alternative energy businesses, careful reading of the appropriate statutes and discussion with counsel and state government personnel should be undertaken before any business makes firm plans based on the assumption that it may receive a credit.

**The MBT Refundable R&D Credit, MCL 208.1405.** For tax years 2009 and later, taxpayers may claim a credit against MBT liability equal to 1.90 percent of the taxpayer's research and development expenses. This credit, when combined with the total compensation and investment credits allowed under MCL 208.1403, may not exceed 65 percent of the taxpayer's total MBT liability. Taxpayers may also take a credit against the MBT equal to 30 percent of the taxpayer's eligible contribution in an eligible R&D business in tax years 2009 and 2010.<sup>4</sup> Taxpayers must apply to the Michigan Economic Growth Authority, or MEGA, and receive a certificate from MEGA in order to claim this credit.

**The MBT Refundable Hybrid Technology R&D Credit, MCL 208.1450.** For tax years beginning after January 1, 2008 and ending before January 1, 2016, taxpayers engaged in R&D on a hybrid system, the primary purpose of which is propelling a motor vehicle, may claim a credit against MBT liability in the amount of 3.9 percent of the compensation for services, performed in a qualified facility, paid to employees at that facility. However, taxpayers seeking this credit were required to enter into a written agreement with MEGA prior to April 1, 2007, thereby prospectively limiting the availability of this credit.<sup>5</sup>

**The MBT High Technology Anchor Company Payroll Credit, MCL 208.1431a, and High Technology Anchor Company Taxable Property Credit, MCL 208.1431c.** Both of these credits exist to reward "anchor companies," or "qualified high-technology businesses," that are integral parts of "qualified high-technology activities" and have the potential or ability to influence the business decisions and site locations of "qualified suppliers or customers."<sup>6</sup> MEGA reviews applications by prospective "anchor companies" and may grant "qualified taxpayer" status upon "anchor companies" that influence one or more "qualified suppliers or customers" to open, locate, or expand in Michigan.<sup>7</sup> "Qualified suppliers or customers" are those that open a new location in Michigan, or locate in Michigan, or existing Michigan businesses that expand as a result of an "anchor company" and satisfy certain MEGA requirements.<sup>8</sup>

Effective April 8, 2008, a qualified taxpayer may claim a credit against the MBT in an amount up to 100 percent of a qualified supplier or customer's payroll, attributable to employees performing qualified new jobs (as determined by MEGA), multiplied by the tax rate for the tax year, for a period not to exceed five years. Also effective during this time, a qualified taxpayer may claim a credit against the MBT equal to the sum of up to 5 percent of the taxable value of each qualified supplier or customer's property located within a 10-mile radius of the qualified taxpayer and subject to ad valorem taxes (as determined by MEGA). If this property is subject to industrial facilities tax, then the qualified taxpayer may include only up to 2.5 percent of the taxable value of the property in the credit calculation.<sup>9</sup>

**Miscellaneous Energy-Related Credits, MCL 208.1432, 208.1434.** A variety of high-technology-directed credits exist in MBT Sections 1432 and 1434, including a credit for polycrystalline silicon manufacturers, parties to written agreements with MEGA, based on their energy consumption costs,<sup>10</sup> a credit for plug-in traction battery pack manufacturers, parties to agreements with MEGA, based on kilowatt hour battery capacity,<sup>11</sup> a credit for "qualified expenses for vehicle engineering" under an agreement with MEGA,<sup>12</sup> a credit for "qualified advanced battery engineering expenses" under an agreement with MEGA,<sup>13</sup> and a credit for capital investment in an integrative cell manufacturing facility, under the terms of an agreement with MEGA.<sup>14</sup> All of these credits are highly specific and limited in scope, and attorneys or taxpayers who believe that they might have applicability to an alternative energy business would be wise to read the statute closely and discuss the proposed activities with experienced counsel and MEGA.

### Michigan Tax Credits Directed Specifically at Alternative Energy Businesses

The following credits are directed specifically towards alternative energy businesses, though in some cases availability is limited to a select pool of taxpayers. Businesses, and their counsel, should carefully weigh the benefits of credits and long-term business strategies to ensure that the best overall opportunities for growth in Michigan are seized by alternative energy businesses.

**Nonrefundable Business Activity Tax Credit, MCL 208.1429(2).** This credit against MBT liability is administered by the Michigan NextEnergy Authority, a "public body corporate and politic" established in 2002, as set forth in MCL 207.821 et seq., and located in the Department of Management and Budget. It allows businesses engaged in alternative energy research, development, and manufacturing to claim a credit equal to the lesser of 1) the amount by which a business's "tax liability attributable to qualified business activity" for the year exceeds the business's "baseline tax liability attributable to qualified business activity" or 2) 10 percent of the amount by which the business's "adjusted qualified business activity" performed in Michigan, outside of

a Renaissance Zone, for a tax year exceeds such activity for the 2001 tax year under the former SBT Section 37e. "Qualified business activity" is defined in MCL 208.1429(i) to include research, development, or manufacturing of an alternative energy marine propulsion system, an alternative energy system, an alternative energy vehicle, alternative energy technology, or renewable fuel. These "alternative" and "renewable fuel" defined terms are found in MCL 207.822, and among them "alternative energy system" and "alternative energy technology," found at MCL 207.822(c) and (d), are notable for their breadth (encompassing systems and technologies pertaining to fuel cells, wind and solar sources, microturbines, photovoltaic, battery cell, clean fuels, and biomass systems, to name some of the many). It bears mention here, in connection with the mention of a Renaissance Zone, that the NextEnergy Zone was established as one such zone in 2002 at the Wayne State University Research and Technology Park.

**Refundable Payroll Tax Credit, MCL 208.1429(5).** This refundable credit against MBT liability is administered by the Michigan NextEnergy Authority, and available to taxpayers located in the NextEnergy Zone. The credit is equal to the "qualified payroll amount" (as defined in MCL 208.1429(7)(k)) and, if it exceeds MBT liability for the tax year, the excess may be refunded to the taxpayer. As this refundable credit is available only to "qualified alternative energy entities," defined in MCL 208.1429(7)(h) to be located in an "alternative energy zone," of which currently only the NextEnergy Zone exists at Wayne State University in Detroit, its availability is severely limited compared to the nonrefundable business activity credit discussed above.

**Renewable Energy Renaissance Zones, MCL 125.2681 et seq.** Under 2006 legislation, expanded in 2008, the State of Michigan may create up to 15 Renewable Energy Renaissance Zones (each a RERZ), each of which may offer 100 percent abatement of MBT, state education tax, personal and real property taxes, and local income taxes for up to 15 years, phased out in increments of 25 percent over the last three years of the term. Counties or communities must submit an application to the Michigan Strategic Fund Board (MSF) in order to have an area designated as an RERZ. Taxpayers that may reap the benefits of location in a RERZ must meet the definition of a "renewable energy facility" as set forth in MCL 125.2683(k), meaning a facility that creates energy directly or fuel from the wind, the sun, trees, grasses, biosolids, algae, agricultural commodities, processed products from agricultural commodities, or residues from agricultural processes, wood or forest processes, food production and processing, the paper products industry, solid biomass, animal wastes, or landfill gases (or focuses on research, development, or manufacturing of systems or components of systems used to create energy or fuel from the items described above).

**Alternative Energy Personal Property Tax Exemption, MCL 211.9i.** One primary function of the Michigan NextEnergy Authority is the annual certification of alternative energy personal

property that may qualify for tax exemption. Personal property eligible for this tax exemption includes the alternative energy systems, personal property of an alternative energy technology business and the personal property of a business not engaged in alternative energy technology, but instead used solely for researching, developing, or manufacturing alternative energy technologies. Alternative energy systems include fuel cells, solar and wind energy systems, microturbines, and clean fuel systems powered by natural gas, ethanol, hydrogen, biomass and biodiesel, among others (a complete list may be found at MCL 207.822). This tax exemption encourages new alternative energy development in Michigan by limiting its availability to nonresidential technology owners, R&D or manufacturers of such technology, and property new to Michigan (not previously exempted from Michigan tax).

**Biomass Gasification and Methane Digester Property Tax Exemption, MCL 211.9(1)(j).** This property tax exemption applies to certain energy production-related farm facilities and covers exemption of 100 percent of both real and personal property taxes. Receipt of the exemption requires Michigan Department of Agriculture (MDA) certification and compliance under the Michigan Agricultural Environmental Assistance Program (MAEAP), as well as permitted access to the facility by universities for information collection.

**Miscellaneous.** The State-offered Biomass Energy Program Grants through the Department of Energy's State Energy Program (through May 2009—query whether this will be extended) and has prepared, and continues to make available, a Model Ordinance for Wind Energy Systems for local governments wishing to develop siting rules for wind turbines.

#### FEDERAL CREDITS AND INCENTIVES OFFER FLEXIBILITY

It is worth noting that in addition to Michigan's alternative energy incentives, some of which admittedly are of limited availability (e.g., due to their focus on farm or NextEnergy Zone taxpayers), provisions of the American Recovery and Reinvestment Act of 2009 offer generous and unusually flexible incentives for investment in and development of domestic alternative energy businesses. For example, while the Internal Revenue Code Section 48 Investment Tax Credit or "ITC" (permitting a credit equal to 30 percent, or 10 percent, of certain expenditures), and IRC Section 45 Renewable Electricity Production Tax Credit or "PTC" (permitting a cents-per-kilowatt hour credit) existed and were available to alternative energy businesses prior to 2009, after the enactment of ARRA, taxpayers eligible for the PTC and ITC gained unexpected flexibility in reaping the benefits of these credits. Taxpayers eligible for the PTC may take it, or the ITC, or receive a cash grant from the U.S. Treasury (and taxpayers eligible for the ITC may elect to take it or the Treasury cash grant). ARRA also lifted certain caps and expanded the scope of certain types of alternative energy systems eligible for tax incentives. Any

alternative energy business interested in location or expansion in Michigan should carefully investigate the incentives available to it from the federal, as well as state, government in order to maximize the value of strategic business decisions.

#### CONCLUSION

Michigan's governor and legislators appear to be serious in their efforts to attract new alternative energy business to the state. Early returns show some successes, such as the commitments of Global Wind Systems, Inc. and A123 Systems, though more time is needed to determine how well the state is able to, for example, bring wind system manufacturing and assembly to Western Michigan or any alternative energy company in need of plentiful automotive-trained skilled labor to metro Detroit. While a number of the MBT/MEGA or NextEnergy Authority administered credits discussed above are narrow in availability (for example, requiring location in the NextEnergy Zone, or one of the state's handful of Renewable Energy Renaissance Zones, or work in a narrow market niche), the state's and federal government's efforts to incentivize alternative energy business development and technological innovation are heartening. This writer hopes that the *Michigan Tax Lawyer* will check back in with this issue in 5 and 10 years, to track progress in changing Michigan's economy one tax credit dollar at a time.

#### ABOUT THE AUTHOR

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#### ENDNOTES

- 1 "Michigan Renewable and Efficiency Industries Show Strong Growth," U.S. Department of Energy State Energy Program, February 2009 URL [http://apps1.eere.energy.gov/state\\_energy\\_program/update/project\\_detail.cfm/pb\\_id=1381](http://apps1.eere.energy.gov/state_energy_program/update/project_detail.cfm/pb_id=1381); "New Wind Turbine Plant Employs Former Auto Workers in Michigan," U.S. Department of Energy EERE State Activities News and Partnerships April 27, 2009 URL [http://apps1.eere.energy.gov/states/news\\_detail.cfm/news\\_id=12483](http://apps1.eere.energy.gov/states/news_detail.cfm/news_id=12483); Chrissie Thompson, A123 Systems will 'definitely build' Michigan battery plant, *Crain's Detroit Business*, April 10, 2009.
- 2 "Michigan Initiates Big Efficiency Program, Workforce Training for the Wind Industry," U.S. Department of Energy State Energy Program, April 2009 URL [http://apps1.eere.energy.gov/state\\_energy\\_program/update/project\\_detail.cfm/pb\\_id=1403](http://apps1.eere.energy.gov/state_energy_program/update/project_detail.cfm/pb_id=1403).
- 3 'Green' is all about 'jobs' Granholm clarifies shift in economy, *The Ann Arbor News*, March 6, 2009.

## PROMOTION OF ALTERNATIVE ENERGY TECHNOLOGIES

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| 4 | MCL 208.1407(1). Definitions for “eligible business,” “eligible contribution,” “qualified taxpayer,” “research and development” and “eligible business” may be found in MCL 208.1407(9)(b), (c), (d) and (e). | 8  | MCL 208.1431a(5)(f) |
| 5 | MCL 208.1450(1)   | 9  | MCL 208.1431c(1)    |
| 6 | The terms “Business,” “Qualified high-technology activity” and “Qualified high-technology business” are defined in the MEGA Act, MCL 207.803.   | 10 | MCL 208.1432(1)     |
| 7 | MCL 208.1431a(5)  | 11 | MCL 208.1434(2)     |
|   |   | 12 | MCL 208.1434(3)     |
|   |   | 13 | MCL 208.1434(4)     |
|   |   | 14 | MCL 208.1434(5)     |