

HOUSE BILL No. 5041

October 2, 2013, Introduced by Rep. Farrington and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 500 (MCL 208.1500), as amended by 2011 PA 292.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 500. (1) Except as otherwise provided in subsection (2)
2 or (7), a taxpayer described under section 117(5)(a) or under
3 section 680 of the income tax act of 1967, 1967 PA 281, MCL
4 206.680, that voluntarily elects for the taxpayer's first tax year
5 ending after December 31, 2011 to file a return and pay the tax
6 imposed by this act in order to claim a certificated credit or any
7 unused carryforward for that tax year shall continue to file a
8 return and pay the tax imposed under this act for each tax year
9 thereafter until that certificated credit and any carryforward from

1 that credit is used up. Except as otherwise provided under
2 subsection (7), if a person awarded a certificated credit is a
3 member of a unitary business group, the unitary business group, and
4 not the member, shall file a return and pay the tax, if any, under
5 this act and claim the certificated credit. Except as otherwise
6 provided under subsection (7), if the taxpayer that elects to file
7 a return and pay the tax imposed by this act in order to claim a
8 certificated credit or any unused carryforward of that credit for
9 that tax year is a unitary business group, the return filed by the
10 unitary business group shall include all persons included in the
11 unitary business group regardless of whether that person is
12 incorporated. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT OR**
13 **PART 2 OR 3 OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.601**
14 **TO 206.713, IN THE CASE OF A FLOW-THROUGH ENTITY THAT HAS MADE AN**
15 **ELECTION UNDER THIS SECTION, EACH MEMBER OF THE FLOW-THROUGH ENTITY**
16 **THAT DOES NOT FILE AS A MEMBER OF A UNITARY BUSINESS GROUP WITH THE**
17 **FLOW-THROUGH ENTITY SHALL DISREGARD ALL ITEMS ATTRIBUTABLE TO THAT**
18 **MEMBER'S OWNERSHIP INTEREST IN THE ELECTING FLOW-THROUGH ENTITY FOR**
19 **ALL PURPOSES OF PART 2 OF THE INCOME TAX ACT OF 1967, 1967 PA 281,**
20 **MCL 206.601 TO 206.699, AND THE ELECTING FLOW-THROUGH ENTITY SHALL**
21 **NOT BE SUBJECT TO THE TAX WITHHOLDING PROVISIONS OF SECTION 703(4)**
22 **OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.703, WITH**
23 **RESPECT TO ITS MEMBERS THAT ARE CORPORATIONS.**

24 (2) A taxpayer with a certificated credit under section 435 or
25 437, which certificated credit or any unused carryforward may be
26 claimed in a tax year ending after December 31, 2011 may elect to
27 pay the tax imposed by this act in the tax year in which that

1 certificated credit may be claimed in lieu of the tax imposed under
2 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to
3 ~~206.713.~~ **206.699.** If a person with a certificated credit under
4 section 435 or 437 that elects under this subsection to pay the tax
5 imposed by this act is a member of a unitary business group, the
6 unitary business group, and not the member, shall file a return and
7 pay the tax, if any, under this act and claim that certificated
8 credit.

9 (3) A taxpayer with a certificated credit under section 435 or
10 437 that elects under subsection (2) after the taxpayer's first tax
11 year ending after December 31, 2011 to pay the tax imposed by this
12 act may claim any other certificated credit that taxpayer would be
13 eligible for in the year in which the taxpayer claims a
14 certificated credit under section 435 or 437, but not any
15 certificated credit that would have accrued in any year before the
16 election under subsection (2). A taxpayer with a certificated
17 credit under section 437(10) that elects under subsection (2) after
18 the taxpayer's first tax year after December 31, 2011 to pay the
19 tax imposed by this act shall continue to file a return and pay the
20 tax imposed under this act for each tax year thereafter until the
21 certificated credit under section 437(10) is complete and that
22 credit is used up. When the taxpayer's certificated credit under
23 section 435 or 437 that was the basis for the taxpayer's election
24 under subsection (2) is extinguished, the taxpayer is no longer
25 eligible to pay the tax under this act and may no longer claim any
26 other remaining certificated credits.

27 (4) For tax years that begin after December 31, 2011, a

1 taxpayer's tax liability under this act, after application of all
2 credits, deductions, and exemptions, shall be the greater of the
3 following:

4 (a) The amount of the taxpayer's tax liability under this act,
5 notwithstanding the calculation required under this section, after
6 application of all credits, deductions, and exemptions and any
7 carryforward of any unused credit as prescribed in this act.

8 (b) An amount equal to the taxpayer's tax liability as
9 computed pursuant to part 2 of the income tax act of 1967, 1967 PA
10 281, MCL 206.601 to ~~206.713~~, **206.699**, after application of all
11 credits, deductions, and exemptions under part 2 of the income tax
12 act of 1967, 1967 PA 281, MCL 206.601 to ~~206.713~~, **206.699**, as if
13 the taxpayer were subject to the tax imposed under part 2 of the
14 income tax act of 1967, 1967 PA 281, MCL 206.601 to ~~206.713~~,
15 **206.699**, less the amount of the taxpayer's certificated credits,
16 including any unused carryforward of a certificated credit, that
17 the taxpayer was allowed to claim for the tax year under this act.
18 However, in calculating the amount under this subdivision, the
19 following apply:

20 (i) A taxpayer described under section 117(5)(a) shall not
21 include a deduction for any business loss under section 623(4) of
22 the income tax act of 1967, 1967 PA 281, MCL 206.623, for any prior
23 year in which the taxpayer was not subject to the tax levied under
24 this act.

25 (ii) A taxpayer shall not include any nonrefundable
26 certificated credit to the extent that credit exceeds the
27 taxpayer's tax liability. Any nonrefundable credit remaining after

1 application of the limitation in this subparagraph may be carried
2 forward.

3 (iii) For a taxpayer that is a partnership or S corporation,
4 business income includes payments and items of income and expense
5 that are attributable to business activity of the partnership or S
6 corporation and separately reported to the members.

7 (5) If the result of the calculation under subsection (4) is
8 negative, the taxpayer shall be refunded that amount.

9 (6) A taxpayer with a certificated credit under subsection (7)
10 or section 435 or 437 that elects to pay the tax under this act may
11 elect to claim a refundable credit as provided under section 510.
12 If a refundable credit is claimed under section 510, that credit
13 shall not be used to calculate a taxpayer's tax liability under
14 subsection (4).

15 (7) Subject to the limitations provided under this subsection,
16 a taxpayer that is a member of a unitary business group and that
17 has a certificated credit under sections 431 and 434(2) and (5) is
18 not required to file a combined return as a unitary business group
19 and may elect to file a separate return and pay the tax, if any,
20 under this act and claim the certificated credit under section
21 434(5) as provided under this subsection. A taxpayer that elects to
22 file a separate return as provided under this subsection and redeem
23 a voucher certificate under a voucher agreement entered pursuant to
24 this subsection and proceeding from an agreement entered pursuant
25 to section 434(5) for an amount equal to the employment expenses
26 and related engineering product development and administrative
27 costs for the support of integrated battery cells, anodes and

1 cathodes, and cell assembly shall create an additional 100 new jobs
2 in this state, for a total of 400 new jobs, and the maximum
3 allowable amount redeemed under this subsection or under section
4 510 shall not exceed \$25,000,000.00 per year for no more than 3
5 years. A taxpayer that elects to file as provided under this
6 subsection and redeem a voucher certificate under a voucher
7 agreement entered pursuant to this subsection and proceeding from
8 an agreement entered pursuant to section 434(5) shall not claim a
9 credit for any agreement entered pursuant to section 431 or 434(2).