

# HOUSE BILL No. 5720

June 2, 2016, Introduced by Reps. Pscholka, Victory and Hughes 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 2013 PA 233.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 500. (1) Except as otherwise provided in ~~subsection (2)~~  
2 ~~or (7)~~, **THIS SECTION**, a taxpayer described under section 117(5) (a)  
3 or under section 680 of the income tax act of 1967, 1967 PA 281,  
4 MCL 206.680, that voluntarily elects for the taxpayer's first tax  
5 year ending after December 31, 2011 to file a return and pay the  
6 tax imposed by this act in order to claim a certificated credit or  
7 any 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  
10 that credit is used up. Except as otherwise provided under  
11 subsection (7), if a person awarded a certificated credit is a

1 member of a unitary business group, the unitary business group, and  
2 not the member, shall file a return and pay the tax, if any, under  
3 this act and claim the certificated credit. Except as otherwise  
4 provided under subsection (7), if the taxpayer that elects to file  
5 a return and pay the tax imposed by this act in order to claim a  
6 certificated credit or any unused carryforward of that credit for  
7 that tax year is a unitary business group, the return filed by the  
8 unitary business group shall include all persons included in the  
9 unitary business group regardless of whether that person is  
10 incorporated. Notwithstanding any other provision of this act or  
11 part 2 or 3 of the income tax act of 1967, 1967 PA 281, MCL 206.601  
12 to 206.713, in the case of a flow-through entity that has made an  
13 election under this section, each member of the flow-through entity  
14 that does not file as a member of a unitary business group with the  
15 flow-through entity shall disregard all items attributable to that  
16 member's ownership interest in the electing flow-through entity for  
17 all purposes of part 2 of the income tax act of 1967, 1967 PA 281,  
18 MCL 206.601 to 206.699, and the electing flow-through entity shall  
19 not be subject to the tax withholding provisions of section 703(4)  
20 of the income tax act of 1967, 1967 PA 281, MCL 206.703, with  
21 respect to its members that are corporations.

22 (2) A taxpayer with a certificated credit under section 435 or  
23 437, which certificated credit or any unused carryforward may be  
24 claimed in a tax year ending after December 31, 2011 may elect to  
25 pay the tax imposed by this act in the tax year in which that  
26 certificated credit may be claimed in lieu of the tax imposed under  
27 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to

1 206.699. If a person with a certificated credit under section 435  
2 or 437 that elects under this subsection to pay the tax imposed by  
3 this act is a member of a unitary business group, the unitary  
4 business group, and not the member, shall file a return and pay the  
5 tax, if any, under this act and claim that certificated credit.

6 (3) A taxpayer with a certificated credit under section 435 or  
7 437 that elects under subsection (2) after the taxpayer's first tax  
8 year ending after December 31, 2011 to pay the tax imposed by this  
9 act may claim any other certificated credit that taxpayer would be  
10 eligible for in the year in which the taxpayer claims a  
11 certificated credit under section 435 or 437, but not any  
12 certificated credit that would have accrued in any year before the  
13 election under subsection (2). A taxpayer with a certificated  
14 credit under section 437(10) that elects under subsection (2) after  
15 the taxpayer's first tax year after December 31, 2011 to pay the  
16 tax imposed by this act shall continue to file a return and pay the  
17 tax imposed under this act for each tax year thereafter until the  
18 certificated credit under section 437(10) is complete and that  
19 credit is used up. When the taxpayer's certificated credit under  
20 section 435 or 437 that was the basis for the taxpayer's election  
21 under subsection (2) is extinguished, the taxpayer is no longer  
22 eligible to pay the tax under this act and may no longer claim any  
23 other remaining certificated credits.

24 (4) For tax years that begin after December 31, 2011, a  
25 taxpayer's tax liability under this act, after application of all  
26 credits, deductions, and exemptions, shall be the greater of the  
27 following:

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

5 (b) An amount equal to the taxpayer's tax liability as  
6 computed pursuant to part 2 of the income tax act of 1967, 1967 PA  
7 281, MCL 206.601 to 206.699, after application of all credits,  
8 deductions, and exemptions under part 2 of the income tax act of  
9 1967, 1967 PA 281, MCL 206.601 to 206.699, as if the taxpayer were  
10 subject to the tax imposed under part 2 of the income tax act of  
11 1967, 1967 PA 281, MCL 206.601 to 206.699, less the amount of the  
12 taxpayer's certificated credits, including any unused carryforward  
13 of a certificated credit, that the taxpayer was allowed to claim  
14 for the tax year under this act. However, in calculating the amount  
15 under this subdivision, the following apply:

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

21 (ii) A taxpayer shall not include any nonrefundable  
22 certificated credit to the extent that credit exceeds the  
23 taxpayer's tax liability. Any nonrefundable credit remaining after  
24 application of the limitation in this subparagraph may be carried  
25 forward.

26 (iii) For a taxpayer that is a partnership or S corporation,  
27 business income includes payments and items of income and expense

1 that are attributable to business activity of the partnership or S  
2 corporation and separately reported to the members.

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

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

11 (7) Subject to the limitations provided under this subsection,  
12 a taxpayer that is a member of a unitary business group and that  
13 has a certificated credit under sections 431 and 434(2) and (5) is  
14 not required to file a combined return as a unitary business group  
15 and may elect to file a separate return and pay the tax, if any,  
16 under this act and claim the certificated credit under section  
17 434(5) as provided under this subsection. A taxpayer that elects to  
18 file a separate return as provided under this subsection and redeem  
19 a voucher certificate under a voucher agreement entered pursuant to  
20 this subsection and proceeding from an agreement entered pursuant  
21 to section 434(5) for an amount equal to the employment expenses  
22 and related engineering product development and administrative  
23 costs for the support of integrated battery cells, anodes and  
24 cathodes, and cell assembly shall create an additional 100 new jobs  
25 in this state, for a total of 400 new jobs, and the maximum  
26 allowable amount redeemed under this subsection or under section  
27 510 shall not exceed \$25,000,000.00 per year for no more than 3

1 years. A taxpayer that elects to file as provided under this  
2 subsection and redeem a voucher certificate under a voucher  
3 agreement entered pursuant to this subsection and proceeding from  
4 an agreement entered pursuant to section 434(5) shall not claim a  
5 credit for any agreement entered pursuant to section 431 or 434(2).

6       **(8) A TAXPAYER WITH A CERTIFICATED CREDIT GRANTED UNDER**  
7 **SECTION 36109 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION**  
8 **ACT, 1994 PA 451, MCL 324.36109, WHICH CERTIFICATED CREDIT HAD BEEN**  
9 **CLAIMED IN A PREVIOUS TAX YEAR UNDER PART 1 OF THE INCOME TAX ACT**  
10 **OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, BUT THAT CERTIFICATED**  
11 **CREDIT IS NO LONGER ELIGIBLE TO BE CLAIMED UNDER PART 1 OF THE**  
12 **INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, AS A**  
13 **RESULT OF THE DEATH OCCURRING AFTER DECEMBER 31, 2011 OF AN**  
14 **INDIVIDUAL FARMLAND OWNER, OR AN INDIVIDUAL CONSIDERED THE FARMLAND**  
15 **OWNER UNDER SECTION 36109(1) (D) OF THE NATURAL RESOURCES AND**  
16 **ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.36109, AND THE**  
17 **TRANSFER OF THE OWNERSHIP OF THE FARMLAND PROPERTY SUBJECT TO THE**  
18 **FARMLAND DEVELOPMENT RIGHTS AGREEMENT UPON WHICH THAT CERTIFICATED**  
19 **CREDIT IS BASED INTO AN ESTATE OR TRUST, MAY ELECT TO PAY THE TAX**  
20 **IMPOSED BY THIS ACT IN THE FIRST TAX YEAR IN WHICH THAT**  
21 **CERTIFICATED CREDIT MAY BE CLAIMED UNDER THIS ACT. A TAXPAYER THAT**  
22 **ELECTS UNDER THIS SUBSECTION TO PAY THE TAX IMPOSED BY THIS ACT**  
23 **SHALL CONTINUE TO FILE A RETURN AND PAY THE TAX IMPOSED UNDER THIS**  
24 **ACT FOR EACH TAX YEAR THEREAFTER UNTIL THE CERTIFICATED CREDIT**  
25 **GRANTED UNDER SECTION 36109 OF THE NATURAL RESOURCES AND**  
26 **ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.36109, IS**  
27 **COMPLETE AND THAT CREDIT IS USED UP, OR THE TAXPAYER NO LONGER OWNS**

1 THE PROPERTY SUBJECT TO THE AGREEMENT, WHICHEVER OCCURS FIRST. WHEN  
2 THE TAXPAYER'S CERTIFICATED CREDIT UNDER SECTION 36109 OF THE  
3 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451,  
4 MCL 324.36109, THAT WAS THE BASIS FOR THE TAXPAYER'S ELECTION UNDER  
5 THIS SUBSECTION IS EXTINGUISHED, OR THE TAXPAYER NO LONGER OWNS  
6 THAT PROPERTY UNDER THE AGREEMENT, WHICHEVER OCCURS FIRST, THE  
7 TAXPAYER IS NO LONGER ELIGIBLE TO PAY THE TAX UNDER THIS ACT AND  
8 MAY NO LONGER CLAIM ANY OTHER REMAINING CERTIFICATED CREDITS.

9 Enacting section 1. This amendatory act is retroactive and  
10 effective for tax years beginning after December 31, 2011.