

# HOUSE BILL No. 4472

April 16, 2015, Introduced by Reps. Townsend, Derek Miller, Irwin, Hoadley, LaVoy, Schor, Hovey-Wright and Driskell 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,  
and by adding section 402.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 402. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT,  
2 BEGINNING ON AND AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT  
3 THAT ADDED THIS SECTION, THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR  
4 ITS SUCCESSOR SHALL NOT MODIFY OR AMEND AN EXISTING WRITTEN  
5 AGREEMENT WITH A TAXPAYER FOR A CERTIFICATED CREDIT UNDER SECTION  
6 430, 431, 431A, 431B, 431C, 432, 434, OR 450, UNLESS THE  
7 MODIFICATION OR AMENDMENT REDUCES THE NET AMOUNT OF THE CREDIT TO  
8 THE TAXPAYER. IN ADDITION, THE AUTHORITY OR ITS SUCCESSOR SHALL NOT

1 MODIFY OR AMEND AN EXISTING WRITTEN AGREEMENT WITH A TAXPAYER UNDER  
2 THIS SECTION IF THE AMENDMENT OR MODIFICATION DECREASES THE JOB  
3 CREATION OR JOB RETENTION REQUIREMENTS, EXTENDS THE TIME FRAME OR  
4 TERM OF YEARS FOR THE AWARD OF THE CREDIT OR TIME FRAME WHEN THE  
5 CREDIT CAN BE CLAIMED, OR ADDS ADDITIONAL FACILITIES WHOSE JOBS CAN  
6 COUNT TOWARD THE JOB CREATION OR JOB RETENTION REQUIREMENTS. IF THE  
7 AUTHORITY OR ITS SUCCESSOR INTENDS TO MODIFY OR AMEND AN EXISTING  
8 AGREEMENT WITH A TAXPAYER UNDER THIS SECTION, THE AUTHORITY OR ITS  
9 SUCCESSOR SHALL NOTIFY BY ELECTRONIC MAIL THE GOVERNOR, THE AUDITOR  
10 GENERAL, THE HOUSE FISCAL AGENCY, THE SENATE FISCAL AGENCY, AND  
11 MEMBERS OF THE HOUSE AND SENATE NOT LESS THAN 30 DAYS BEFORE THE  
12 AUTHORITY OR ITS SUCCESSOR MODIFIES OR AMENDS THE WRITTEN  
13 AGREEMENT. THE NOTICE PROVIDED BY ELECTRONIC MAIL SHALL CONTAIN ALL  
14 OF THE FOLLOWING:

15 (A) THE NAME OF THE TAXPAYER.

16 (B) DESCRIPTION OF THE MODIFICATION OR AMENDMENT AND AN  
17 EXPLANATION OF WHY IT IS NEEDED.

18 (C) FISCAL IMPACT OF THE MODIFICATION OR AMENDMENT ON THIS  
19 STATE AND THE TAXPAYER.

20 Sec. 500. (1) Except as otherwise provided in subsection (2)  
21 or (7), a taxpayer described under section 117(5)(a) or under  
22 section 680 of the income tax act of 1967, 1967 PA 281, MCL  
23 206.680, that voluntarily elects for the taxpayer's first tax year  
24 ending after December 31, 2011 to file a return and pay the tax  
25 imposed by this act in order to claim a certificated credit or any  
26 unused carryforward for that tax year shall continue to file a  
27 return and pay the tax imposed under this act for each tax year

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

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

1 pay the tax imposed by this act in the tax year in which that  
2 certificated credit may be claimed in lieu of the tax imposed under  
3 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to  
4 206.699. If a person with a certificated credit under section 435  
5 or 437 that elects under this subsection to pay the tax imposed by  
6 this act is a member of a unitary business group, the unitary  
7 business group, and not the member, shall file a return and pay the  
8 tax, if any, under this act and claim that certificated 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 206.699, after application of all credits,  
11 deductions, and exemptions under part 2 of the income tax act of  
12 1967, 1967 PA 281, MCL 206.601 to 206.699, as if the taxpayer were  
13 subject to the tax imposed under part 2 of the income tax act of  
14 1967, 1967 PA 281, MCL 206.601 to 206.699, less the amount of the  
15 taxpayer's certificated credits, including any unused carryforward  
16 of a certificated credit, that the taxpayer was allowed to claim  
17 for the tax year under this act. However, in calculating the amount  
18 under this subdivision, the following apply:

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

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

1 forward.

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

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

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

14 (7) Subject to the limitations provided under this subsection,  
15 a taxpayer that is a member of a unitary business group and that  
16 has a certificated credit under sections 431 and 434(2) and (5) is  
17 not required to file a combined return as a unitary business group  
18 and may elect to file a separate return and pay the tax, if any,  
19 under this act and claim the certificated credit under section  
20 434(5) as provided under this subsection. A taxpayer that elects to  
21 file a separate return as provided under this subsection and redeem  
22 a voucher certificate under a voucher agreement entered pursuant to  
23 this subsection and proceeding from an agreement entered pursuant  
24 to section 434(5) for an amount equal to the employment expenses  
25 and related engineering product development and administrative  
26 costs for the support of integrated battery cells, anodes and  
27 cathodes, and cell assembly shall create an additional 100 new jobs

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

9 (8) BEGINNING ON AND AFTER THE EFFECTIVE DATE OF THE  
10 AMENDATORY ACT THAT ADDED THIS SUBSECTION, A TAXPAYER WITH A  
11 WRITTEN AGREEMENT UNDER SECTION 430, 431, 431A, 431B, 431C, 432,  
12 434, OR 450 SHALL SUBMIT ITS APPLICATION FOR A CERTIFICATED CREDIT  
13 NOT LATER THAN 60 DAYS AFTER THE LAST DAY OF THE TAXPAYER'S TAX  
14 YEAR IN WHICH THE TAXPAYER MET THE REQUISITE REQUIREMENTS AS  
15 PROVIDED UNDER THE WRITTEN AGREEMENT. A TAXPAYER THAT DOES NOT MEET  
16 THE REQUISITE REQUIREMENTS AS PROVIDED UNDER ITS WRITTEN AGREEMENT  
17 SHALL NOTIFY THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR ITS  
18 SUCCESSOR NOT LATER THAN 60 DAYS AFTER THE LAST DAY OF THE  
19 TAXPAYER'S MOST RECENT TAX YEAR. A TAXPAYER THAT RECEIVES A  
20 CERTIFICATED CREDIT UNDER SECTION 430, 431, 431A, 431B, 431C, 432,  
21 434, OR 450 SHALL SUBMIT THAT CERTIFICATED CREDIT WITH THE ANNUAL  
22 RETURN FILED UNDER THIS ACT FOR THE TAX YEAR IN WHICH THE  
23 CERTIFICATED CREDIT IS TO BE CLAIMED NOT LATER THAN 210 DAYS AFTER  
24 RECEIVING THE CERTIFICATED CREDIT. A TAXPAYER THAT FAILS TO MEET  
25 THE REQUIREMENTS OF THIS SUBSECTION FORFEITS ITS RIGHT TO CLAIM  
26 THAT CERTIFICATED CREDIT.