

HOUSE BILL No. 4473

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
9 MODIFY OR AMEND AN EXISTING WRITTEN AGREEMENT WITH A TAXPAYER UNDER
10 THIS SECTION IF THE AMENDMENT OR MODIFICATION DECREASES THE JOB

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

13 (A) THE NAME OF THE TAXPAYER.

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

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

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

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

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

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

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

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

1 following:

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

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

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

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

27 (iii) For a taxpayer that is a partnership or S corporation,

1 business income includes payments and items of income and expense
2 that are attributable to business activity of the partnership or S
3 corporation and separately reported to the members.

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

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

12 (7) Subject to the limitations provided under this subsection,
13 a taxpayer that is a member of a unitary business group and that
14 has a certificated credit under sections 431 and 434(2) and (5) is
15 not required to file a combined return as a unitary business group
16 and may elect to file a separate return and pay the tax, if any,
17 under this act and claim the certificated credit under section
18 434(5) as provided under this subsection. A taxpayer that elects to
19 file a separate return as provided under this subsection and redeem
20 a voucher certificate under a voucher agreement entered pursuant to
21 this subsection and proceeding from an agreement entered pursuant
22 to section 434(5) for an amount equal to the employment expenses
23 and related engineering product development and administrative
24 costs for the support of integrated battery cells, anodes and
25 cathodes, and cell assembly shall create an additional 100 new jobs
26 in this state, for a total of 400 new jobs, and the maximum
27 allowable amount redeemed under this subsection or under section

1 510 shall not exceed \$25,000,000.00 per year for no more than 3
2 years. A taxpayer that elects to file as provided under this
3 subsection and redeem a voucher certificate under a voucher
4 agreement entered pursuant to this subsection and proceeding from
5 an agreement entered pursuant to section 434(5) shall not claim a
6 credit for any agreement entered pursuant to section 431 or 434(2).

7 (8) NOTWITHSTANDING ANY OTHER PROVISION UNDER THIS ACT,
8 BEGINNING ON AND AFTER OCTOBER 1, 2015, THE AGGREGATE AMOUNT OF
9 CERTIFICATED CREDITS APPROVED BY THE MICHIGAN ECONOMIC GROWTH
10 AUTHORITY OR ITS SUCCESSOR UNDER SECTIONS 430, 431, 431A, 431B,
11 431C, 432, 434, AND 450 SHALL NOT EXCEED \$400,000,000.00 IN A STATE
12 FISCAL YEAR AND THE AGGREGATE AMOUNT OF CERTIFICATED CREDITS UNDER
13 SECTIONS 430, 431, 431A, 431B, 431C, 432, 434, AND 450 ALLOWED TO
14 BE CLAIMED IN A STATE FISCAL YEAR SHALL NOT EXCEED \$400,000,000.00.
15 ON OCTOBER 1 OF EACH FISCAL YEAR, IF THE TOTAL OF ALL CERTIFICATED
16 CREDITS APPROVED FOR THE IMMEDIATELY PRECEDING STATE FISCAL YEAR IS
17 LESS THAN \$400,000,000.00, THE MICHIGAN ECONOMIC GROWTH AUTHORITY
18 OR ITS SUCCESSOR MAY USE THE REMAINDER OF THAT ALLOTTED AMOUNT TO
19 APPROVE ADDITIONAL APPLICATIONS FOR CERTIFICATED CREDITS UNDER
20 SECTION 430, 431, 431A, 431B, 431C, 432, 434, OR 450 SUBMITTED FOR
21 THE IMMEDIATELY SUCCEEDING FISCAL YEAR. ON OCTOBER 1 OF EACH FISCAL
22 YEAR, IF THE TOTAL OF ALL CERTIFICATED CREDITS CLAIMED IN THE
23 IMMEDIATELY PRECEDING STATE FISCAL YEAR IS LESS THAN
24 \$400,000,000.00, THEN THE DEPARTMENT MAY CARRY FORWARD FOR 1 YEAR
25 ONLY THE DIFFERENCE BETWEEN \$400,000,000.00 AND THE TOTAL OF ALL
26 CERTIFICATED CREDITS CLAIMED IN THE IMMEDIATELY PRECEDING CALENDAR
27 YEAR. IF A TAXPAYER WITH A CERTIFICATED CREDIT UNDER SECTION 430,

1 431, 431A, 431B, 431C, 432, 434, OR 450 IS UNABLE TO CLAIM THE
2 CREDIT OR TO CLAIM THE FULL AMOUNT OF THE CREDIT APPROVED IN THE
3 TAXPAYER'S CERTIFICATE DUE TO THE CAP IMPOSED UNDER THIS
4 SUBSECTION, THAT TAXPAYER IS ALLOWED TO CLAIM THE CREDIT IN THE
5 IMMEDIATELY SUCCEEDING TAX YEAR OR TO CARRY FORWARD THAT EXCESS TO
6 OFFSET TAX LIABILITY IN SUBSEQUENT TAX YEARS UNTIL USED UP.