

HOUSE BILL No. 6576

December 4, 2018, Introduced by Rep. Johnson 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 2016 PA 426,
and by adding section 402; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 402. (1) 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, UNLESS THE
6 MODIFICATION OR AMENDMENT REDUCES THE NET AMOUNT OF THE CREDIT TO
7 THE TAXPAYER. HOWEVER, THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR
8 ITS SUCCESSOR MAY MODIFY OR AMEND AN EXISTING WRITTEN AGREEMENT FOR
9 TECHNICAL CHANGES AS LONG AS THE MODIFICATION OR AMENDMENT DOES NOT

1 INCREASE THE NET AMOUNT OF THE CREDIT AS DETERMINED BY THE MICHIGAN
2 ECONOMIC GROWTH AUTHORITY OR ITS SUCCESSOR. UNDER NO CIRCUMSTANCES
3 SHALL THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR ITS SUCCESSOR
4 MODIFY OR AMEND ON EXISTING WRITTEN AGREEMENT TO PROVIDE THE
5 TAXPAYER WITH A LONGER TERM TO CLAIM THAT CREDIT.

6 (2) ANY MODIFICATIONS OR AMENDMENTS TO EXISTING WRITTEN
7 AGREEMENTS WITH A TAXPAYER FOR A CERTIFICATED CREDIT AFTER THE
8 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION SHALL
9 COMPLY WITH THE GUIDELINES ESTABLISHED PURSUANT TO SECTION 8(13) OF
10 THE MICHIGAN ECONOMIC GROWTH AUTHORITY ACT, 1995 PA 24, MCL
11 207.808.

12 (3) BEGINNING ON AND AFTER JANUARY 1, 2019, A TAXPAYER SHALL
13 NOT CLAIM MORE THAN 1 CERTIFICATED CREDIT IN ANY TAX YEAR.

14 Sec. 500. (1) Except as otherwise provided in this section, a
15 taxpayer described under section 117(5)(a) or under section 680 of
16 the income tax act of 1967, 1967 PA 281, MCL 206.680, that
17 voluntarily elects for the taxpayer's first tax year ending after
18 December 31, 2011 to file a return and pay the tax imposed by this
19 act in order to claim a certificated credit or any unused
20 carryforward for that tax year shall continue to file a return and
21 pay the tax imposed under this act for each tax year thereafter
22 until that certificated credit and any carryforward from that
23 credit is used up. Except as otherwise provided under subsection
24 (7), if a person awarded a certificated credit is a member of a
25 unitary business group, the unitary business group, and not the
26 member, shall file a return and pay the tax, if any, under this act
27 and claim the certificated credit. Except as otherwise provided

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

19 (2) A taxpayer with a certificated credit under section 435 or
20 437, which certificated credit or any unused carryforward may be
21 claimed in a tax year ending after December 31, 2011 may elect to
22 pay the tax imposed by this act in the tax year in which that
23 certificated credit may be claimed in lieu of the tax imposed under
24 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to
25 206.699. If a person with a certificated credit under section 435
26 or 437 that elects under this subsection to pay the tax imposed by
27 this act is a member of a unitary business group, the unitary

1 business group, and not the member, shall file a return and pay the
2 tax, if any, under this act and claim that certificated credit.

3 (3) A taxpayer with a certificated credit under section 435 or
4 437 that elects under subsection (2) after the taxpayer's first tax
5 year ending after December 31, 2011 to pay the tax imposed by this
6 act may claim any other certificated credit that taxpayer would be
7 eligible for in the year in which the taxpayer claims a
8 certificated credit under section 435 or 437, but not any
9 certificated credit that would have accrued in any year before the
10 election under subsection (2). A taxpayer with a certificated
11 credit under section 437(10) that elects under subsection (2) after
12 the taxpayer's first tax year after December 31, 2011 to pay the
13 tax imposed by this act shall continue to file a return and pay the
14 tax imposed under this act for each tax year thereafter until the
15 certificated credit under section 437(10) is complete and that
16 credit is used up. When the taxpayer's certificated credit under
17 section 435 or 437 that was the basis for the taxpayer's election
18 under subsection (2) is extinguished, the taxpayer is no longer
19 eligible to pay the tax under this act and may no longer claim any
20 other remaining certificated credits.

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

25 (a) The amount of the taxpayer's tax liability under this act,
26 notwithstanding the calculation required under this section, after
27 application of all credits, deductions, and exemptions and any

1 carryforward of any unused credit as prescribed in this act.

2 (b) An amount equal to the taxpayer's tax liability as
3 computed pursuant to part 2 of the income tax act of 1967, 1967 PA
4 281, MCL 206.601 to 206.699, after application of all credits,
5 deductions, and exemptions under part 2 of the income tax act of
6 1967, 1967 PA 281, MCL 206.601 to 206.699, as if the taxpayer were
7 subject to the tax imposed under part 2 of the income tax act of
8 1967, 1967 PA 281, MCL 206.601 to 206.699, less the amount of the
9 taxpayer's certificated credits, including any unused carryforward
10 of a certificated credit, that the taxpayer was allowed to claim
11 for the tax year under this act. However, in calculating the amount
12 under this subdivision, the following apply:

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

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

23 (iii) For a taxpayer that is a partnership or **SUBCHAPTER S**
24 corporation, business income includes payments and items of income
25 and expense that are attributable to business activity of the
26 partnership or S corporation and separately reported to the
27 members.

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

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

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

1 agreement entered pursuant to this subsection and proceeding from
2 an agreement entered pursuant to section 434(5) shall not claim a
3 credit for any agreement entered pursuant to section 431 or 434(2).

4 (8) A taxpayer with a certificated credit granted under
5 section 36109 of the natural resources and environmental protection
6 act, 1994 PA 451, MCL 324.36109, which certificated credit had been
7 claimed in a previous tax year under part 1 of the income tax act
8 of 1967, 1967 PA 281, MCL 206.1 to 206.532, but that certificated
9 credit is no longer eligible to be claimed under part 1 of the
10 income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, as a
11 result of the death occurring after December 31, 2011 of an
12 individual farmland owner, or an individual considered the farmland
13 owner under section 36109(1)(d) of the natural resources and
14 environmental protection act, 1994 PA 451, MCL 324.36109, and the
15 transfer of the ownership of the farmland property subject to the
16 farmland development rights agreement upon which that certificated
17 credit is based into an estate or trust, may elect to pay the tax
18 imposed by this act in the first tax year in which that
19 certificated credit may be claimed under this act. A taxpayer that
20 elects under this subsection to pay the tax imposed by this act
21 shall continue to file a return and pay the tax imposed under this
22 act for each tax year thereafter until the certificated credit
23 granted under section 36109 of the natural resources and
24 environmental protection act, 1994 PA 451, MCL 324.36109, is
25 complete and that credit is used up, or the taxpayer no longer owns
26 the property subject to the agreement, whichever occurs first. When
27 the taxpayer's certificated credit under section 36109 of the

1 natural resources and environmental protection act, 1994 PA 451,
2 MCL 324.36109, that was the basis for the taxpayer's election under
3 this subsection is extinguished, or the taxpayer no longer owns
4 that property under the agreement, whichever occurs first, the
5 taxpayer is no longer eligible to pay the tax under this act and
6 may no longer claim any other remaining certificated credits.

7 **(9) BEGINNING ON AND AFTER JANUARY 1, 2019, A TAXPAYER SHALL**
8 **ONLY CLAIM 1 CERTIFICATED CREDIT PER TAX YEAR.**

9 Enacting section 1. The Michigan business tax act, 2007 PA 36,
10 MCL 208.1101 to 208.1601, is repealed effective for tax years that
11 begin after December 31, 2031.

12 Enacting section 2. This amendatory act does not take effect
13 unless all of the following bills of the 99th Legislature are
14 enacted into law:

15 (a) Senate Bill No.____ or House Bill No. 6577 (request no.
16 01573'17 *).

17 (b) Senate Bill No.____ or House Bill No. 6575 (request no.
18 05853'17 *).

19 (c) Senate Bill No.____ or House Bill No. 6574 (request no.
20 05854'17 *).