

# Legislative Analysis



## TAX CREDITS FOR MERGED AND ACQUIRED ENTITIES

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4189 as enacted**  
**Public Act 90 of 2019**  
**Sponsor: Rep. Jason M. Sheppard**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4190 as enacted**  
**Public Act 91 of 2019**  
**Sponsor: Rep. Michael Webber**

**House Bill 4191 as enacted**  
**Public Act 92 of 2019**  
**Sponsor: Rep. Kevin Coleman**

**1st House Committee: Tax Policy**  
**2nd House Committee: Ways and Means**  
**Senate Committee: Finance**  
**Revised 11-21-19**

### SUMMARY:

House Bills 4189, 4190, and 4191 amend the Michigan Business Tax Act, the Michigan Economic Growth Authority Act, and the Income Tax Act, respectively, to make changes to the authorization of business tax credits and to allow eligible business entities to transfer certain tax credits to other business entities as authorized by the Michigan Strategic Fund (MSF).

In 2011, the Michigan Business Tax (MBT) was replaced by a new Corporate Income Tax (CIT). However, businesses that had been approved for, received, or assigned certain “certificated credits” under the MBT prior to January 1, 2012 (the start of the CIT) are allowed elect to continue to file and pay the MBT rather than the CIT in order to continue claiming those certificated credits, until the credits (and any carryforwards) are fully exhausted.

Generally speaking, the bills address circumstances where a business firm acquires another firm, and the firm being acquired has been approved to receive, or has been assigned, a certificated credit under the MBT. Specifically, the bills are understood to address MEGA tax credits awarded to the company Federal-Mogul in 2004 and the status of those credits following the acquisition of Federal-Mogul by Tenneco on October 1, 2018. (See **Fiscal Impact** for further discussion.)

The bills took effect October 10, 2019.

**House Bill 4189** modifies the definition of “taxpayer” in the Michigan Business Tax Act to include a person that acquired, pursuant to the modification of an existing written agreement approved by a resolution of the MSF Board on November 27, 2018, and the subsequent transfer of that written agreement, a certified credit authorized by the Michigan Economic Growth Authority (MEGA) in 2004, or the unitary business group of which the acquiring person is a member, as long as the acquiring person or the unitary business group elects to file a return and pay taxes under the Michigan Business Tax Act in lieu of the corporate income tax under the Income Tax Act.

The bill provides that such a taxpayer may, for the first tax year ending after October 1, 2018, only, elect to pay the tax imposed by the Michigan Business Tax Act instead of the corporate income tax imposed by the Income Tax Act. If the first tax year ending after October 1, 2018, ends before the bill takes effect, and the taxpayer has already filed its tax returns for that year under the corporate income tax, the taxpayer may choose to refile its tax return under the Michigan Business Tax Act instead. The Department of Treasury may require documentation to show that the taxpayer is receiving the MEGA tax credit. The terms, conditions, and amount of the credit that is the basis of the election continue and cannot be expanded in any manner that would increase the total amount of that credit because of the taxpayer's election under these provisions. A taxpayer that elects under these provisions to pay tax under the Michigan Business Tax Act may claim any other certificated credit that the person from whom the credit that was the basis for the election was transferred would have been eligible for in the same tax year, but not a credit that would have accrued in tax years before the election under these provisions. The acquiring taxpayer also cannot claim any other certificated credit for which an election could have been made by the acquiring taxpayer under section 500(1) for the acquiring taxpayer's first tax year ending after December 31, 2011. When the tax credit that was the basis for the election under these provisions is extinguished, the taxpayer is no longer eligible to pay the tax under the Michigan Business Tax Act and may no longer claim any other remaining certificated credits.

The bill repeals the Michigan Business Tax Act effective for tax years that begin after December 31, 2031.

The bill is retroactive and effective for tax years beginning after December 31, 2017.

MCL 208.117 and 208.500

**House Bill 4190** amends the Michigan Economic Growth Authority Act to allow MEGA or its successor to modify or amend the MEGA tax credit agreement approved by a resolution of the MSF Board on November 27, 2018, and assign or transfer that agreement as long as the modification or amendment reduces the total amount of the credit and does not extend the term to claim the credit and the value of the credit taken by the transferee does not exceed \$12.0 million.

The bill also requires MEGA or its successor to establish, and publish on its website, guidelines for the amendment, modification, or transfer described above.

MCL 207.808

**House Bill 4191** amends the Income Tax Act to allow a taxpayer that acquires a MEGA tax credit authorized in 2004 pursuant to modification of an existing written agreement approved by the MSF Board on November 27, 2018, and the subsequent transfer of that agreement, to file and pay the tax under the Michigan Business Tax Act instead of the tax under the Income Tax Act for the first tax year ending after October 1, 2018, if MEGA or

its successor determines that the modification and transfer of the credit reduce the total amount of the credit.

If the first tax year after October 1, 2018, ends before the bill takes effect and the taxpayer has already filed a return for that year under the Income Tax Act, the taxpayer may file an amended return for that tax year under the Income Tax Act and file an original return as provided under section 505 of the Michigan Business Tax Act.

The bill is retroactive and effective for tax years beginning after December 31, 2017.

MCL 206.680

### **FISCAL IMPACT:**

Under current law, the certificated credit awarded to Federal-Mogul in 2004 ceased to exist as of October 1, 2018, when Federal-Mogul was acquired by Tenneco. Because the credit was assigned to Federal-Mogul's employer identification number (EIN) and Federal-Mogul was no longer an independent entity after being acquired, the credit was not transferrable and any remaining liability to the state beyond tax year (TY) 2018 fell to \$0. Thus, Federal-Mogul could claim a portion of the credit for the period in TY 2018 that it engaged in business activity under its EIN (up through September 30, 2018). Although the exact amount of the credit is not known, public testimony indicated that the value would be between \$4.0 million to \$5.0 million.

On November 27, 2018, the Michigan Strategic Fund board voted to amend the job retention credit awarded to Federal-Mogul in 2004 to include Tenneco's EIN so that Tenneco could claim the credit and use its existing employment toward determining the TY 2018 value of the credit. The agreement specifies that the duration of the credit would be reduced from 17 years to 13 years (effectively ending the credit after TY 2018), and that the value could not exceed \$12.0 million in TY 2018.

As written, the bills would allow the credit to be awarded under Tenneco's EIN and would allow Tenneco to file under the Michigan Business Tax to claim the credit.

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