

Act No. 90
Public Acts of 2019
Approved by the Governor
October 10, 2019

Filed with the Secretary of State
October 10, 2019

EFFECTIVE DATE: October 10, 2019

**STATE OF MICHIGAN 100TH
LEGISLATURE REGULAR
SESSION OF 2019**

Introduced by Reps. Sheppard, Webber and Coleman

ENROLLED HOUSE BILL No. 4189

AN ACT to amend 2007 PA 36, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations,” by amending sections 117 and 500 (MCL 208.1117 and 208.1500), section 117 as amended by 2011 PA 292 and section 500 as amended by 2016 PA 426; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 117. (1) “Tangible personal property” means that term as defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

(2) “Tax” means the tax imposed under this act, including interest and penalties under this act, unless the term is given a more limited meaning in the context of this act or a provision of this act.

(3) “Tax-exempt person” means an organization that is exempt from federal income tax under section 501(a) of the internal revenue code, and a partnership, limited liability company, joint venture, unincorporated association, or other group or combination of organizations acting as a unit if all such organizations are exempt from federal income tax under section 501(a) of the internal revenue code and if all activities of the unit are exclusively related to the charitable, educational, or other purposes or functions that are the basis for the exemption of such organizations from federal income tax, except the following:

(a) an organization exempt under section 501(c)(12) or (16) of the internal revenue code.

(b) An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section 501(c)(12) of the internal revenue code but for its failure to meet the requirement in section 501(c)(12) that 85% or more of its income must consist of amounts collected from members.

(4) “Tax year” means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this act. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act and except as otherwise provided under this subsection, a taxpayer’s tax year is for the same period as is covered by its federal income tax return. A taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December of that tax year. If the term tax year in this act is used in reference to 1 or more previous or preceding tax years and those referenced tax years are before January 1, 2008, then those referenced tax years are deemed those same tax years during which former 1975 PA 228 was in effect. A taxpayer

that has a fiscal tax year ending after December 31, 2011 is considered to have 2 separate tax years as follows: the first tax year is for the fractional part of the fiscal tax year before January 1, 2012, and the second tax year is for the fractional part of the fiscal tax year after December 31, 2011. Each short period tax return filed for each fractional part of the fiscal year pursuant to this subsection is considered an annual return under section 505.

(5) "Taxpayer" means, through December 31, 2011, a person or a unitary business group liable for a tax, interest, or penalty under this act. Beginning January 1, 2012, taxpayer means any of the following:

(a) A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit but is not subject to the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, and that elects under section 500 to file a return and pay the tax imposed under this act, if any.

(b) A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit and that elected under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act, if any. Except as otherwise provided under section 500(7), if a person or unitary business group that elects under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act is part of a unitary business group as defined under this act, the unitary business group as defined under this act shall file the return and pay the tax, if any, under this act.

(c) A person that acquires, pursuant to the modification of an existing written agreement approved by a resolution of the Michigan strategic fund board on November 27, 2018 and the subsequent transfer of that written agreement, a certificated credit authorized by the Michigan economic growth authority in 2004 under section 431, or the unitary business group of which the acquiring person is a member, elects under section 680(5) of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act in lieu of the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699.

(6) "Unitary business group" means a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations.

(7) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(8) "Unrelated business activity" means, for a tax-exempt person, business activity directly connected with an unrelated trade or business as defined in section 513 of the internal revenue code.

Sec. 500. (1) Except as otherwise provided in this section, a taxpayer described under section 117(5)(a) or under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, that voluntarily elects for the taxpayer's first tax year ending after December 31, 2011 to file a return and pay the tax imposed by this act in order to claim a certificated credit or any unused carryforward for that tax year shall continue to file a return and pay the tax imposed under this act for each tax year thereafter until that certificated credit and any carryforward from that credit is used up. Except as otherwise provided under subsection (7), if a person awarded a certificated credit is a member of a unitary business group, the unitary business group, and not the member, shall file a return and pay the tax, if any, under this act and claim the certificated credit. Except as otherwise provided under subsection (7), if the taxpayer that elects to file a return and pay the tax imposed by this act in order to claim a certificated credit or any unused carryforward of that credit for that tax year is a unitary business group, the return filed by the unitary business group shall include all persons included in the unitary business group regardless of whether that person is incorporated. Notwithstanding any other provision of this act or part 2 or 3 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, in the case of a flow-through entity that has made an election under this section, each member of the flow-through entity that does not file as a member of a unitary business group with the flow-through entity shall disregard all items attributable to that member's ownership interest in the electing flow-through entity for all purposes of part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, and the electing flow-through entity shall not be subject to the tax withholding provisions of section 703(4) of the income tax act of 1967, 1967 PA 281, MCL 206.703, with respect to its members that are corporations.

(2) A taxpayer with a certificated credit under section 435 or 437, which certificated credit or any unused carryforward may be claimed in a tax year ending after December 31, 2011 may elect to pay the tax imposed by this act in the tax year in which that certificated credit may be claimed in lieu of the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699. If a person with a certificated credit under section 435 or 437 that elects under this subsection to pay the tax imposed by this act is a member of a unitary business group, the unitary business group, and not the member, shall file a return and pay the tax, if any, under this act and claim that certificated credit.

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

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

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

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

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

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

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

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

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

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

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

certificated credit under section 36109 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36109, that was the basis for the taxpayer's election under this subsection is extinguished, or the taxpayer no longer owns that property under the agreement, whichever occurs first, the taxpayer is no longer eligible to pay the tax under this act and may no longer claim any other remaining certificated credits.

(9) A taxpayer described under section 117(5)(c) may, for the first tax year ending after October 1, 2018 only, elect to file the return and pay the tax imposed by this act in lieu of the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699. However, if the first tax year ending after October 1, 2018 ends before the effective date of the amendatory act that added this subsection and the taxpayer has already filed a return for that tax year under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, then the taxpayer may, if within the statute of limitations period prescribed under section 27a of 1941 PA 122, MCL 205.27a, elect to file the return and pay the tax imposed by this act in lieu of the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, for that tax year by filing an original return as provided under section 505 and filing the necessary amended return under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699. The department may require documentation from the taxpayer that elects to file a return under this subsection to support the acquisition of the certificated credit that is the basis for the election. The terms, conditions, and amount of the certificated credit that is the basis for the election shall continue and shall not be expanded in any manner that would increase the total amount of that certificated credit as a result of an election made under this subsection. A taxpayer that elects pursuant to this subsection to pay the tax imposed by this act may claim any other certificated credit that the person from whom the certificated credit that was the basis for the election was transferred would have been eligible to claim in the same tax year in which the taxpayer claims the certificated credit under section 431 that was the basis for the election, but shall not claim any certificated credit that the acquiring taxpayer would have accrued in any tax year before the election under this subsection or any other certificated credit for which an election could have been made by the acquiring taxpayer under subsection (1) for the acquiring taxpayer's first tax year ending after December 31, 2011. When the taxpayer's certificated credit under section 431 that was the basis for the taxpayer's election under this subsection is extinguished, the taxpayer is no longer eligible to pay the tax under this act and may no longer claim any other remaining certificated credits.

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

Enacting section 2. This amendatory act is retroactive and effective for tax years beginning after December 31, 2017.

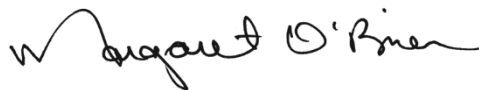
Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 100th Legislature are enacted into law:

- (a) House Bill No. 4190.
- (b) House Bill No. 4191.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

Compiler's note: House Bill No. 4190, referred to in enacting section 3, was filed with the Secretary of State October 10, 2019, and became 2019 PA 91, Imd. Eff. Oct. 10, 2019.

House Bill No. 4191, also referred to in enacting section 3, was filed with the Secretary of State October 10, 2019, and became 2019 PA 92, Imd. Eff. Oct. 10, 2019.