

**SUBSTITUTE FOR
HOUSE BILL NO. 4189**

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
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:

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

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

7 (3) "Tax-exempt person" means an organization that is exempt



1 from federal income tax under section 501(a) of the internal
2 revenue code, and a partnership, limited liability company, joint
3 venture, unincorporated association, or other group or combination
4 of organizations acting as a unit if all such organizations are
5 exempt from federal income tax under section 501(a) of the internal
6 revenue code and if all activities of the unit are exclusively
7 related to the charitable, educational, or other purposes or
8 functions that are the basis for the exemption of such
9 organizations from federal income tax, except the following:

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

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

17 (4) "Tax year" means the calendar year, or the fiscal year
18 ending during the calendar year, upon the basis of which the tax
19 base of a taxpayer is computed under this act. If a return is made
20 for a fractional part of a year, tax year means the period for
21 which the return is made. Except for the first return required by
22 this act and except as otherwise provided under this subsection, a
23 taxpayer's tax year is for the same period as is covered by its
24 federal income tax return. A taxpayer that has a 52- or 53-week tax
25 year beginning not more than 7 days before December 31 of any year
26 is considered to have a tax year beginning after December of that
27 tax year. If the term tax year in this act is used in reference to
28 1 or more previous or preceding tax years and those referenced tax
29 years are before January 1, 2008, then those referenced tax years



1 are deemed those same tax years during which former 1975 PA 228 was
2 in effect. A taxpayer that has a fiscal tax year ending after
3 December 31, 2011 is considered to have 2 separate tax years as
4 follows: the first tax year is for the fractional part of the
5 fiscal tax year before January 1, 2012, and the second tax year is
6 for the fractional part of the fiscal tax year after December 31,
7 2011. Each short period tax return filed for each fractional part
8 of the fiscal year pursuant to this subsection is considered an
9 annual return under section 505.

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

14 (a) A person or unitary business group that has been approved
15 to receive, has received, or has been assigned a certificated
16 credit but is not subject to the tax imposed under part 2 of the
17 income tax act of 1967, 1967 PA 281, MCL 206.601 to ~~206.713,~~
18 **206.699**, and that elects under section 500 to file a return and pay
19 the tax imposed under this act, if any.

20 (b) A person or unitary business group that has been approved
21 to receive, has received, or has been assigned a certificated
22 credit and that elected under section 680 of the income tax act of
23 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax
24 imposed under this act, if any. Except as otherwise provided under
25 section 500(7), if a person or unitary business group that elects
26 under section 680 of the income tax act of 1967, 1967 PA 281, MCL
27 206.680, to file a return and pay the tax imposed under this act is
28 part of a unitary business group as defined under this act, the
29 unitary business group as defined under this act shall file the



1 return and pay the tax, if any, under this act.

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

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

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

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



1 Sec. 500. (1) Except as otherwise provided in this section, a
2 taxpayer described under section 117(5) (a) or under section 680 of
3 the income tax act of 1967, 1967 PA 281, MCL 206.680, that
4 voluntarily elects for the taxpayer's first tax year ending after
5 December 31, 2011 to file a return and pay the tax imposed by this
6 act in order to claim a certificated credit or any unused
7 carryforward for that tax year shall continue to file a return and
8 pay the tax imposed under this act for each tax year thereafter
9 until that certificated credit and any carryforward from that
10 credit is used up. Except as otherwise provided under subsection
11 (7), if a person awarded a certificated credit is a member of a
12 unitary business group, the unitary business group, and not the
13 member, shall file a return and pay the tax, if any, under this act
14 and claim the certificated credit. Except as otherwise provided
15 under subsection (7), if the taxpayer that elects to file a return
16 and pay the tax imposed by this act in order to claim a
17 certificated credit or any unused carryforward of that credit for
18 that tax year is a unitary business group, the return filed by the
19 unitary business group shall include all persons included in the
20 unitary business group regardless of whether that person is
21 incorporated. Notwithstanding any other provision of this act or
22 part 2 or 3 of the income tax act of 1967, 1967 PA 281, MCL 206.601
23 to 206.713, in the case of a flow-through entity that has made an
24 election under this section, each member of the flow-through entity
25 that does not file as a member of a unitary business group with the
26 flow-through entity shall disregard all items attributable to that
27 member's ownership interest in the electing flow-through entity for
28 all purposes of part 2 of the income tax act of 1967, 1967 PA 281,
29 MCL 206.601 to 206.699, and the electing flow-through entity shall



1 not be subject to the tax withholding provisions of section 703(4)
2 of the income tax act of 1967, 1967 PA 281, MCL 206.703, with
3 respect to its members that are corporations.

4 (2) A taxpayer with a certificated credit under section 435 or
5 437, which certificated credit or any unused carryforward may be
6 claimed in a tax year ending after December 31, 2011 may elect to
7 pay the tax imposed by this act in the tax year in which that
8 certificated credit may be claimed in lieu of the tax imposed under
9 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to
10 206.699. If a person with a certificated credit under section 435
11 or 437 that elects under this subsection to pay the tax imposed by
12 this act is a member of a unitary business group, the unitary
13 business group, and not the member, shall file a return and pay the
14 tax, if any, under this act and claim that certificated credit.

15 (3) A taxpayer with a certificated credit under section 435 or
16 437 that elects under subsection (2) after the taxpayer's first tax
17 year ending after December 31, 2011 to pay the tax imposed by this
18 act may claim any other certificated credit that taxpayer would be
19 eligible for in the year in which the taxpayer claims a
20 certificated credit under section 435 or 437, but not any
21 certificated credit that would have accrued in any year before the
22 election under subsection (2). A taxpayer with a certificated
23 credit under section 437(10) that elects under subsection (2) after
24 the taxpayer's first tax year after December 31, 2011 to pay the
25 tax imposed by this act shall continue to file a return and pay the
26 tax imposed under this act for each tax year thereafter until the
27 certificated credit under section 437(10) is complete and that
28 credit is used up. When the taxpayer's certificated credit under
29 section 435 or 437 that was the basis for the taxpayer's election



1 under subsection (2) is extinguished, the taxpayer is no longer
2 eligible to pay the tax under this act and may no longer claim any
3 other remaining certificated credits.

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

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

12 (b) An amount equal to the taxpayer's tax liability as
13 computed pursuant to part 2 of the income tax act of 1967, 1967 PA
14 281, MCL 206.601 to 206.699, after application of all credits,
15 deductions, and exemptions under part 2 of the income tax act of
16 1967, 1967 PA 281, MCL 206.601 to 206.699, as if the taxpayer were
17 subject to the tax imposed under part 2 of the income tax act of
18 1967, 1967 PA 281, MCL 206.601 to 206.699, less the amount of the
19 taxpayer's certificated credits, including any unused carryforward
20 of a certificated credit, that the taxpayer was allowed to claim
21 for the tax year under this act. However, in calculating the amount
22 under this subdivision, the following apply:

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

28 (ii) A taxpayer shall not include any nonrefundable
29 certificated credit to the extent that credit exceeds the



1 taxpayer's tax liability. Any nonrefundable credit remaining after
2 application of the limitation in this subparagraph may be carried
3 forward.

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

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

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

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



1 cathodes, and cell assembly shall create an additional 100 new jobs
2 in this state, for a total of 400 new jobs, and the maximum
3 allowable amount redeemed under this subsection or under section
4 510 shall not exceed \$25,000,000.00 per year for no more than 3
5 years. A taxpayer that elects to file as provided under this
6 subsection and redeem a voucher certificate under a voucher
7 agreement entered pursuant to this subsection and proceeding from
8 an agreement entered pursuant to section 434(5) shall not claim a
9 credit for any agreement entered pursuant to section 431 or 434(2).

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



1 environmental protection act, 1994 PA 451, MCL 324.36109, is
2 complete and that credit is used up, or the taxpayer no longer owns
3 the property subject to the agreement, whichever occurs first. When
4 the taxpayer's certificated credit under section 36109 of the
5 natural resources and environmental protection act, 1994 PA 451,
6 MCL 324.36109, that was the basis for the taxpayer's election under
7 this subsection is extinguished, or the taxpayer no longer owns
8 that property under the agreement, whichever occurs first, the
9 taxpayer is no longer eligible to pay the tax under this act and
10 may no longer claim any other remaining certificated credits.

11 **(9) A taxpayer described under section 117(5)(c) may, for the**
12 **first tax year ending after October 1, 2018 only, elect to file the**
13 **return and pay the tax imposed by this act in lieu of the tax**
14 **imposed under part 2 of the income tax act of 1967, 1967 PA 281,**
15 **MCL 206.601 to 206.699. However, if the first tax year ending after**
16 **October 1, 2018 ends before the effective date of the amendatory**
17 **act that added this subsection and the taxpayer has already filed a**
18 **return for that tax year under part 2 of the income tax act of**
19 **1967, 1967 PA 281, MCL 206.601 to 206.699, then the taxpayer may,**
20 **if within the statute of limitations period prescribed under**
21 **section 27a of 1941 PA 122, MCL 205.27a, elect to file the return**
22 **and pay the tax imposed by this act in lieu of the tax imposed**
23 **under part 2 of the income tax act of 1967, 1967 PA 281, MCL**
24 **206.601 to 206.699, for that tax year by filing an original return**
25 **as provided under section 505 and filing the necessary amended**
26 **return under part 2 of the income tax act of 1967, 1967 PA 281, MCL**
27 **206.601 to 206.699. The department may require documentation from**
28 **the taxpayer that elects to file a return under this subsection to**
29 **support the acquisition of the certificated credit that is the**



1 basis for the election. The terms, conditions, and amount of the
2 certificated credit that is the basis for the election shall
3 continue and shall not be expanded in any manner that would
4 increase the total amount of that certificated credit as a result
5 of an election made under this subsection. A taxpayer that elects
6 pursuant to this subsection to pay the tax imposed by this act may
7 claim any other certificated credit that the person from whom the
8 certificated credit that was the basis for the election was
9 transferred would have been eligible to claim in the same tax year
10 in which the taxpayer claims the certificated credit under section
11 431 that was the basis for the election, but shall not claim any
12 certificated credit that the acquiring taxpayer would have accrued
13 in any tax year before the election under this subsection or any
14 other certificated credit for which an election could have been
15 made by the acquiring taxpayer under subsection (1) for the
16 acquiring taxpayer's first tax year ending after December 31, 2011.
17 When the taxpayer's certificated credit under section 431 that was
18 the basis for the taxpayer's election under this subsection is
19 extinguished, the taxpayer is no longer eligible to pay the tax
20 under this act and may no longer claim any other remaining
21 certificated credits.

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

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

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



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

