

HOUSE BILL NO. 4189

February 14, 2019, Introduced by Reps. Sheppard, Webber and Coleman and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 117, 500, and 505 (MCL 208.1117, 208.1500, and
208.1505), section 117 as amended by 2011 PA 292, section 500 as
amended by 2016 PA 426, and section 505 as amended by 2011 PA 305,
and by adding section 402; 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.

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

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

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

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

22 (4) "Tax year" means the calendar year, or the fiscal year
23 ending during the calendar year, upon the basis of which the tax
24 base of a taxpayer is computed under this act. If a return is made
25 for a fractional part of a year, tax year means the period for
26 which the return is made. Except for the first return required by
27 this act and except as otherwise provided under this subsection, a
28 taxpayer's tax year is for the same period as is covered by its
29 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 ~~either~~ **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 ~~206.713,~~ **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

1 section 500(7), if a person or unitary business group that elects
2 under section 680 of the income tax act of 1967, 1967 PA 281, MCL
3 206.680, to file a return and pay the tax imposed under this act is
4 part of a unitary business group as defined under this act, the
5 unitary business group as defined under this act shall file the
6 return and pay the tax, if any, under this act.

7 **(c) A person or unitary business group that acquires the**
8 **rights, privileges, assets, or liabilities of another person or**
9 **member of another unitary business group that has been approved to**
10 **receive, has received, or has been assigned a certificated credit**
11 **under section 431, 435, or 437 and the surviving person or the**
12 **unitary business group of which the surviving person is a member**
13 **elected under section 680(5) of the income tax act of 1967, 1967 PA**
14 **281, MCL 206.680, to file a return and pay the tax imposed under**
15 **this act, if any.**

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

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

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

5 **Sec. 402. (1)** Notwithstanding any other provision of this act,
6 beginning on and after the effective date of the amendatory act
7 that added this section, the Michigan economic growth authority or
8 its successor shall not modify, amend, transfer, or assign an
9 existing written agreement with a taxpayer for a certificated
10 credit, unless the modification or amendment reduces the net amount
11 of the credit to the taxpayer. However, the Michigan economic
12 growth authority or its successor may modify, amend, transfer, or
13 assign an existing written agreement for technical changes as long
14 as the modification, amendment, transfer, or assignment does not
15 increase the net amount of the credit as determined by the Michigan
16 economic growth authority or its successor. Under no circumstances
17 shall the Michigan economic growth authority or its successor
18 modify, amend, transfer, or assign an existing written agreement to
19 provide the taxpayer with a longer term to claim that credit.

20 (2) Any modifications, amendments, transfers, or assignments
21 to existing written agreements with a taxpayer for a certificated
22 credit after the effective date of the amendatory act that added
23 this section shall comply with the guidelines established pursuant
24 to section 8(13) of the Michigan economic growth authority act,
25 1995 PA 24, MCL 207.808.

26 (3) Beginning on and after January 1, 2020, a taxpayer shall
27 not claim more than 1 certificated credit in any tax year.

28 **Sec. 500. (1)** Except as otherwise provided in this section, a
29 taxpayer described under section 117(5) (a) or under section 680 of

1 the income tax act of 1967, 1967 PA 281, MCL 206.680, that
2 voluntarily elects for the taxpayer's first tax year ending after
3 December 31, 2011 to file a return and pay the tax imposed by this
4 act in order to claim a certificated credit or any unused
5 carryforward for that tax year shall continue to file a return and
6 pay the tax imposed under this act for each tax year thereafter
7 until that certificated credit and any carryforward from that
8 credit is used up. Except as otherwise provided under subsection
9 (7), if a person awarded a certificated credit is a member of a
10 unitary business group, the unitary business group, and not the
11 member, shall file a return and pay the tax, if any, under this act
12 and claim the certificated credit. Except as otherwise provided
13 under subsection (7), if the taxpayer that elects to file a return
14 and pay the tax imposed by this act in order to claim a
15 certificated credit or any unused carryforward of that credit for
16 that tax year is a unitary business group, the return filed by the
17 unitary business group shall include all persons included in the
18 unitary business group regardless of whether that person is
19 incorporated. Notwithstanding any other provision of this act or
20 part 2 or 3 of the income tax act of 1967, 1967 PA 281, MCL 206.601
21 to 206.713, in the case of a flow-through entity that has made an
22 election under this section, each member of the flow-through entity
23 that does not file as a member of a unitary business group with the
24 flow-through entity shall disregard all items attributable to that
25 member's ownership interest in the electing flow-through entity for
26 all purposes of part 2 of the income tax act of 1967, 1967 PA 281,
27 MCL 206.601 to 206.699, and the electing flow-through entity shall
28 not be subject to the tax withholding provisions of section 703(4)
29 of the income tax act of 1967, 1967 PA 281, MCL 206.703, with

1 respect to its members that are corporations.

2 (2) A taxpayer with a certificated credit under section 435 or
3 437, which certificated credit or any unused carryforward may be
4 claimed in a tax year ending after December 31, 2011 may elect to
5 pay the tax imposed by this act in the tax year in which that
6 certificated credit may be claimed in lieu of the tax imposed under
7 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to
8 206.699. If a person with a certificated credit under section 435
9 or 437 that elects under this subsection to pay the tax imposed by
10 this act is a member of a unitary business group, the unitary
11 business group, and not the member, shall file a return and pay the
12 tax, if any, under this act and claim that certificated credit.

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

1 other remaining certificated credits.

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

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

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

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

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

1 forward.

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

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

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

15 (7) Subject to the limitations provided under this subsection,
16 a taxpayer that is a member of a unitary business group and that
17 has a certificated credit under sections 431 and 434(2) and (5) is
18 not required to file a combined return as a unitary business group
19 and may elect to file a separate return and pay the tax, if any,
20 under this act and claim the certificated credit under section
21 434(5) as provided under this subsection. A taxpayer that elects to
22 file a separate return as provided under this subsection and redeem
23 a voucher certificate under a voucher agreement entered pursuant to
24 this subsection and proceeding from an agreement entered pursuant
25 to section 434(5) for an amount equal to the employment expenses
26 and related engineering product development and administrative
27 costs for the support of integrated battery cells, anodes and
28 cathodes, and cell assembly shall create an additional 100 new jobs
29 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

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

9 **(9) A taxpayer described under section 117(5)(c) may, only for**
10 **the first tax year ending after the effective date of the**
11 **acquisition of a certificated credit or credits under section 431,**
12 **435, or 437 resulting from that transaction, elect to pay the tax**
13 **imposed by this act in lieu of the tax imposed under part 2 of the**
14 **income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699. A**
15 **taxpayer that elects pursuant to this subsection to pay the tax**
16 **imposed by this act shall continue to file a return and pay the tax**
17 **imposed under this act for each tax year thereafter until that**
18 **certificated credit and any carryforward from that credit is used**
19 **up. The terms, conditions, and amount of a certificated credit that**
20 **were attributable to the person or member of a unitary business**
21 **group whose existence was terminated by the transaction shall**
22 **continue and shall not be expanded in any manner that would**
23 **increase the net amount of that certificated credit as a result of**
24 **an election made under this subsection. A taxpayer that elects**
25 **pursuant to this subsection to pay the tax imposed by this act may**
26 **claim any other certificated credit that the former taxpayer whose**
27 **existence was terminated by the transaction would have been**
28 **eligible to claim in the tax year in which the taxpayer claims the**
29 **certificated credit under section 431, 435, or 437, but not any**

1 certificated credit that would have accrued in any tax year before
2 the election under this subsection. A taxpayer that elects pursuant
3 to this subsection to pay the tax imposed by this act is not
4 eligible to claim any other certificated credit for which an
5 election could have been made by the taxpayer under subsection (1)
6 for the taxpayer's first tax year ending after December 31, 2011.
7 When the taxpayer's certificated credit under section 431, 435, or
8 437 that was the basis for the taxpayer's election under this
9 subsection is extinguished, the taxpayer is no longer eligible to
10 pay the tax under this act and may no longer claim any other
11 remaining certificated credits.

12 (10) Beginning on and after January 1, 2020, a taxpayer shall
13 only claim 1 certificated credit per tax year.

14 Sec. 505. (1) ~~An~~ Except as otherwise provided under this
15 subsection, an annual or final return shall be filed with the
16 department in the form and content prescribed by the department by
17 the last day of the fourth month after the end of the taxpayer's
18 tax year. Any final liability shall be remitted by the last day of
19 the fourth month after the end of the taxpayer's tax year. A
20 taxpayer that elects to file a return under this act pursuant to
21 section 680(5) of the income tax act of 1967, 1967 PA 281, MCL
22 206.680, for a tax year ending before the enactment date of the
23 amendatory act that added this language shall notify the department
24 of its election and file an annual return for that tax year and
25 each tax year thereafter, if applicable, within 4 months after
26 making the election and shall include a copy of the corresponding
27 amended return or returns filed pursuant to part 2 of the income
28 tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699. The
29 department may require documentation from the taxpayer that elects

1 to file a return under this act pursuant to section 680(5) of the
2 income tax act of 1967, 1967 PA 281, MCL 206.680, to support the
3 transaction, the acquisition of the certificated credit or credits
4 that are the basis for the election, and a determination that the
5 election by the Michigan economic growth authority or its successor
6 that the election will reduce the net liability to this state. A
7 taxpayer, other than a taxpayer subject to the tax imposed under
8 chapter 2A or 2B, whose apportioned or allocated gross receipts are
9 less than \$350,000.00 does not need to file a return or pay the tax
10 imposed under this act.

11 (2) If a taxpayer has apportioned or allocated gross receipts
12 for a tax year of less than 12 months, the amount in subsection (1)
13 shall be multiplied by a fraction, the numerator of which is the
14 number of months in the tax year and the denominator of which is
15 12.

16 (3) The department, upon application of the taxpayer and for
17 good cause shown, may extend the date for filing the annual return.
18 Interest at the rate under section 23(2) of 1941 PA 122, MCL
19 205.23, shall be added to the amount of the tax unpaid for the
20 period of the extension. The treasurer shall require with the
21 application payment of the estimated tax liability unpaid for the
22 tax period covered by the extension.

23 (4) If a taxpayer is granted an extension of time within which
24 to file the federal income tax return for any tax year, the filing
25 of a copy of the request for extension together with a tentative
26 return and payment of an estimated tax with the department by the
27 due date provided in subsection (1) shall automatically extend the
28 due date for the filing of an annual or final return under this act
29 until the last day of the eighth month following the original due

1 date of the return. Interest at the rate under section 23(2) of
2 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
3 unpaid for the period of the extension.

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

7 Enacting section 2. This amendatory act takes effect 90 days
8 after the date it is enacted into law.