

HOUSE BILL NO. 5757

February 15, 2022, Introduced by Reps. Rabhi, Carra, Steven Johnson, Aiyash, Hope, Hood, Hoitenga, Howell, Brann, Weiss, Paquette, Sowerby, Pohutsky, Thanedar, Cynthia Johnson, Hornberger, Cavanagh, Reilly, Kuppa, LaGrand, Maddock, Brenda Carter and Yancey 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 2019 PA 90;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 act in order to claim a certificated credit or any unused
2 carryforward for that tax year shall continue to file a return and
3 pay the tax imposed under this act for each tax year thereafter
4 until that certificated credit and any carryforward from that
5 credit is used up. **For the 2021-2022 fiscal year, the total amount**
6 **of all certificated credits under sections 430, 431, 431a, 431b,**
7 **432, 434, and 450 that may be claimed shall not exceed**
8 **\$200,000,000.00. For the 2022-2023 fiscal year, the total amount of**
9 **all certificated credits under sections 430, 431, 431a, 431b, 432,**
10 **434, and 450 that may be claimed shall not exceed \$100,000,000.00.**
11 Except as otherwise provided under subsection (7), if a person
12 awarded a certificated credit is a member of a unitary business
13 group, the unitary business group, and not the member, shall file a
14 return and pay the tax, if any, under this act and claim the
15 certificated credit. Except as otherwise provided under subsection
16 (7), if the taxpayer that elects to file a return and pay the tax
17 imposed by this act in order to claim a certificated credit or any
18 unused carryforward of that credit for that tax year is a unitary
19 business group, the return filed by the unitary business group
20 shall include all persons included in the unitary business group
21 regardless of whether that person is incorporated. Notwithstanding
22 any other provision of this act or part 2 or 3 of the income tax
23 act of 1967, 1967 PA 281, MCL 206.601 to 206.713, in the case of a
24 flow-through entity that has made an election under this section,
25 each member of the flow-through entity that does not file as a
26 member of a unitary business group with the flow-through entity
27 shall disregard all items attributable to that member's ownership
28 interest in the electing flow-through entity for all purposes of
29 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to

1 206.699, and the electing flow-through entity shall not be subject
2 to the tax withholding provisions of section 703(4) of the income
3 tax act of 1967, 1967 PA 281, MCL 206.703, with respect to its
4 members that are corporations.

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

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

1 section 435 or 437 that was the basis for the taxpayer's election
2 under subsection (2) is extinguished, the taxpayer is no longer
3 eligible to pay the tax under this act and may no longer claim any
4 other remaining certificated credits.

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

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

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

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

29 (ii) A taxpayer shall not include any nonrefundable

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

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

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

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

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

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

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

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

12 (9) A taxpayer described under section 117(5)(c) may, for the
13 first tax year ending after October 1, 2018 only, elect to file the
14 return and pay the tax imposed by this act in lieu of the tax
15 imposed under part 2 of the income tax act of 1967, 1967 PA 281,
16 MCL 206.601 to 206.699. However, if the first tax year ending after
17 October 1, 2018 ends before ~~the effective date of the amendatory~~
18 ~~act that added this subsection~~ **October 10, 2019** and the taxpayer
19 has already filed a return for that tax year under part 2 of the
20 income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, then
21 the taxpayer may, if within the statute of limitations period
22 prescribed under section 27a of 1941 PA 122, MCL 205.27a, elect to
23 file the return and pay the tax imposed by this act in lieu of the
24 tax imposed under part 2 of the income tax act of 1967, 1967 PA
25 281, MCL 206.601 to 206.699, for that tax year by filing an
26 original return as provided under section 505 and filing the
27 necessary amended return under part 2 of the income tax act of
28 1967, 1967 PA 281, MCL 206.601 to 206.699. The department may
29 require documentation from the taxpayer that elects to file a

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

23 Enacting section 1. The Michigan business tax act, 2007 PA 36,
24 MCL 208.1101 to 208.1601, is repealed effective October 1, 2023 and
25 does not apply to business activity in this state after September
26 30, 2023.