

MICHIGAN BUSINESS TAX ACT (EXCERPT)
Act 36 of 2007

***** 208.1500 THIS SECTION IS REPEALED BY ACT 90 OF 2019 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2031 *****

208.1500 Taxpayer with certificated credit or unused carryforward.

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.

History: Add. 2011, Act 39, Imd. Eff. May 25, 2011;—Am. 2011, Act 209, Eff. Jan. 1, 2012;—Am. 2011, Act 292, Eff. Jan. 1, 2012;—Am. 2013, Act 233, Imd. Eff. Dec. 26, 2013;—Am. 2016, Act 426, Eff. Mar. 29, 2017;—Am. 2019, Act 90, Imd. Eff. Oct. 10, 2019.

Compiler's note: Enacting section 1 of Act 39 of 2011 provides:

"Enacting section 1. The Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, is repealed effective on the date that the secretary of state receives a written notice from the department of treasury that the last certificated credit or any carryforward from that certificated credit has been claimed."

Enacting section 2 of Act 292 of 2011 provides:

"Enacting section 2. It is the intent of the legislature that the \$75,000,000.00 savings realized in reduced credits allowed under section 434(5) and (6) of the Michigan business tax act, 2007 PA 36, MCL 208.1434, as a result of this amendatory act shall be passed on and utilized to replace any revenue lost due to any personal property tax reform."

In subsection (4)(b)(iii), the reference to "S corporation" evidently should read "subchapter S corporation".

Enacting section 1 of Act 233 of 2013 provides:

"Enacting section 1. This amendatory act is retroactive and effective for tax years that begin after December 31, 2011."

Enacting section 1 of Act 426 of 2016 provides:

"Enacting section 1. This amendatory act is retroactive and effective for tax years beginning after December 31, 2011."

Enacting section 2 of Act 90 of 2019 provides:

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

Popular name: MBT