

HOUSE BILL No. 4377

March 21, 2017, Introduced by Rep. Kosowski 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 2016 PA 426.

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
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

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

22 (2) A taxpayer with a certificated credit under section 435 or
23 437, which certificated credit or any unused carryforward may be
24 claimed in a tax year ending after December 31, 2011 may elect to
25 pay the tax imposed by this act in the tax year in which that
26 certificated credit may be claimed in lieu of the tax imposed under
27 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to

1 206.699. If a person with a certificated credit under section 435
2 or 437 that elects under this subsection to pay the tax imposed by
3 this act is a member of a unitary business group, the unitary
4 business group, and not the member, shall file a return and pay the
5 tax, if any, under this act and claim that certificated credit.

6 (3) A taxpayer with a certificated credit under section 435 or
7 437 that elects under subsection (2) after the taxpayer's first tax
8 year ending after December 31, 2011 to pay the tax imposed by this
9 act may claim any other certificated credit that taxpayer would be
10 eligible for in the year in which the taxpayer claims a
11 certificated credit under section 435 or 437, but not any
12 certificated credit that would have accrued in any year before the
13 election under subsection (2). A taxpayer with a certificated
14 credit under section 437(10) that elects under subsection (2) after
15 the taxpayer's first tax year after December 31, 2011 to pay the
16 tax imposed by this act shall continue to file a return and pay the
17 tax imposed under this act for each tax year thereafter until the
18 certificated credit under section 437(10) is complete and that
19 credit is used up. When the taxpayer's certificated credit under
20 section 435 or 437 that was the basis for the taxpayer's election
21 under subsection (2) is extinguished, the taxpayer is no longer
22 eligible to pay the tax under this act and may no longer claim any
23 other remaining certificated credits.

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

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

5 (b) An amount equal to the taxpayer's tax liability as
6 computed pursuant to part 2 of the income tax act of 1967, 1967 PA
7 281, MCL 206.601 to 206.699, after application of all credits,
8 deductions, and exemptions under part 2 of the income tax act of
9 1967, 1967 PA 281, MCL 206.601 to 206.699, as if the taxpayer were
10 subject to the tax imposed under part 2 of the income tax act of
11 1967, 1967 PA 281, MCL 206.601 to 206.699, less the amount of the
12 taxpayer's certificated credits, including any unused carryforward
13 of a certificated credit, that the taxpayer was allowed to claim
14 for the tax year under this act. However, in calculating the amount
15 under this subdivision, the following apply:

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

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

26 (iii) For a taxpayer that is a partnership or S corporation,
27 business income includes payments and items of income and expense

1 that are attributable to business activity of the partnership or S
2 corporation and separately reported to the members.

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

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

11 (7) Subject to the limitations provided under this subsection,
12 a taxpayer that is a member of a unitary business group and that
13 has a certificated credit under sections 431 and 434(2) and (5) is
14 not required to file a combined return as a unitary business group
15 and may elect to file a separate return and pay the tax, if any,
16 under this act and claim the certificated credit under section
17 434(5) as provided under this subsection. A taxpayer that elects to
18 file a separate return as provided under this subsection and redeem
19 a voucher certificate under a voucher agreement entered pursuant to
20 this subsection and proceeding from an agreement entered pursuant
21 to section 434(5) for an amount equal to the employment expenses
22 and related engineering product development and administrative
23 costs for the support of integrated battery cells, anodes and
24 cathodes, and cell assembly shall create an additional 100 new jobs
25 in this state, for a total of 400 new jobs, and the maximum
26 allowable amount redeemed under this subsection or under section
27 510 shall not exceed \$25,000,000.00 per year for no more than 3

1 years. A taxpayer that elects to file as provided under this
2 subsection and redeem a voucher certificate under a voucher
3 agreement entered pursuant to this subsection and proceeding from
4 an agreement entered pursuant to section 434(5) shall not claim a
5 credit for any agreement entered pursuant to section 431 or 434(2).

6 (8) A taxpayer with a certificated credit granted under
7 section 36109 of the natural resources and environmental protection
8 act, 1994 PA 451, MCL 324.36109, which certificated credit had been
9 claimed in a previous tax year under part 1 of the income tax act
10 of 1967, 1967 PA 281, MCL 206.1 to 206.532, but that certificated
11 credit is no longer eligible to be claimed under part 1 of the
12 income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, as a
13 result of the death occurring after December 31, 2011 of an
14 individual farmland owner, or an individual considered the farmland
15 owner under section 36109(1)(d) of the natural resources and
16 environmental protection act, 1994 PA 451, MCL 324.36109, and the
17 transfer of the ownership of the farmland property subject to the
18 farmland development rights agreement upon which that certificated
19 credit is based into an estate or trust, may elect to pay the tax
20 imposed by this act in the first tax year in which that
21 certificated credit may be claimed under this act. A taxpayer that
22 elects under this subsection to pay the tax imposed by this act
23 shall continue to file a return and pay the tax imposed under this
24 act for each tax year thereafter until the certificated credit
25 granted under section 36109 of the natural resources and
26 environmental protection act, 1994 PA 451, MCL 324.36109, is
27 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) BEGINNING ON AND AFTER THE EFFECTIVE DATE OF THE**
10 **AMENDATORY ACT THAT ADDED THIS SUBSECTION, A TAXPAYER SHALL CLAIM A**
11 **CERTIFICATED CREDIT IN THE SAME TAX YEAR THAT THE CERTIFICATED**
12 **CREDIT WAS CERTIFIED. HOWEVER, IF A TAXPAYER HOLDS A CERTIFICATED**
13 **CREDIT THAT WAS CERTIFIED BEFORE THE EFFECTIVE DATE OF THE**
14 **AMENDATORY ACT THAT ADDED THIS SUBSECTION, IN ORDER TO CLAIM THAT**
15 **CERTIFICATED CREDIT, THE TAXPAYER SHALL PROVIDE THE DEPARTMENT WITH**
16 **AT LEAST A 90-DAY NOTICE BEFORE SUBMITTING THAT CERTIFICATED CREDIT**
17 **WITH ITS ANNUAL RETURN FILED UNDER THIS ACT.**