

HOUSE BILL No. 5558

April 13, 2016, 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 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 2013 PA 233, and section 505 as amended by 2011 PA 305.

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
8 from federal income tax under section 501(a) of the internal

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

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

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

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

1 years are before January 1, 2008, then those referenced tax years
2 are deemed those same tax years during which former 1975 PA 228 was
3 in effect. A taxpayer that has a fiscal tax year ending after
4 December 31, 2011 is considered to have 2 separate tax years as
5 follows: the first tax year is for the fractional part of the
6 fiscal tax year before January 1, 2012, and the second tax year is
7 for the fractional part of the fiscal tax year after December 31,
8 2011. Each short period tax return filed for each fractional part
9 of the fiscal year pursuant to this subsection is considered an
10 annual return under section 505.

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

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

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

1 206.680, to file a return and pay the tax imposed under this act is
2 part of a unitary business group as defined under this act, the
3 unitary business group as defined under this act shall file the
4 return and pay the tax, if any, under this act.

5 (C) A PERSON OR UNITARY BUSINESS GROUP THAT ACQUIRES BY MERGER
6 ALL RIGHTS, PRIVILEGES, AND LIABILITIES OF ANOTHER PERSON OR MEMBER
7 OF A UNITARY BUSINESS GROUP THAT HAS BEEN APPROVED TO RECEIVE, HAS
8 RECEIVED, OR HAS BEEN ASSIGNED A CERTIFICATED CREDIT UNDER SECTION
9 431, 435, OR 437 AND THE SURVIVING PERSON OR UNITARY BUSINESS GROUP
10 ELECTED UNDER SECTION 680(5) OF THE INCOME TAX ACT OF 1967, 1967 PA
11 281, MCL 206.680, TO FILE A RETURN AND PAY THE TAX IMPOSED UNDER
12 THIS ACT, IF ANY.

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

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

27 (8) "Unrelated business activity" means, for a tax-exempt

1 person, business activity directly connected with an unrelated
2 trade or business as defined in section 513 of the internal revenue
3 code.

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

1 that does not file as a member of a unitary business group with the
2 flow-through entity shall disregard all items attributable to that
3 member's ownership interest in the electing flow-through entity for
4 all purposes of part 2 of the income tax act of 1967, 1967 PA 281,
5 MCL 206.601 to 206.699, and the electing flow-through entity shall
6 not be subject to the tax withholding provisions of section 703(4)
7 of the income tax act of 1967, 1967 PA 281, MCL 206.703, with
8 respect to its members that are corporations.

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

20 (3) A taxpayer with a certificated credit under section 435 or
21 437 that elects under subsection (2) after the taxpayer's first tax
22 year ending after December 31, 2011 to pay the tax imposed by this
23 act may claim any other certificated credit that taxpayer would be
24 eligible for in the year in which the taxpayer claims a
25 certificated credit under section 435 or 437, but not any
26 certificated credit that would have accrued in any year before the
27 election under subsection (2). A taxpayer with a certificated

1 credit under section 437(10) that elects under subsection (2) after
2 the taxpayer's first tax year after December 31, 2011 to pay the
3 tax imposed by this act shall continue to file a return and pay the
4 tax imposed under this act for each tax year thereafter until the
5 certificated credit under section 437(10) is complete and that
6 credit is used up. When the taxpayer's certificated credit under
7 section 435 or 437 that was the basis for the taxpayer's election
8 under subsection (2) is extinguished, the taxpayer is no longer
9 eligible to pay the tax under this act and may no longer claim any
10 other remaining certificated credits.

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

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

19 (b) An amount equal to the taxpayer's tax liability as
20 computed pursuant to part 2 of the income tax act of 1967, 1967 PA
21 281, MCL 206.601 to 206.699, after application of all credits,
22 deductions, and exemptions under part 2 of the income tax act of
23 1967, 1967 PA 281, MCL 206.601 to 206.699, as if the taxpayer were
24 subject to the tax imposed under part 2 of the income tax act of
25 1967, 1967 PA 281, MCL 206.601 to 206.699, less the amount of the
26 taxpayer's certificated credits, including any unused carryforward
27 of a certificated credit, that the taxpayer was allowed to claim

1 for the tax year under this act. However, in calculating the amount
2 under this subdivision, the following apply:

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

8 (ii) A taxpayer shall not include any nonrefundable
9 certificated credit to the extent that credit exceeds the
10 taxpayer's tax liability. Any nonrefundable credit remaining after
11 application of the limitation in this subparagraph may be carried
12 forward.

13 (iii) For a taxpayer that is a partnership or S corporation,
14 business income includes payments and items of income and expense
15 that are attributable to business activity of the partnership or S
16 corporation and separately reported to the members.

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

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

25 (7) Subject to the limitations provided under this subsection,
26 a taxpayer that is a member of a unitary business group and that
27 has a certificated credit under sections 431 and 434(2) and (5) is

1 not required to file a combined return as a unitary business group
2 and may elect to file a separate return and pay the tax, if any,
3 under this act and claim the certificated credit under section
4 434(5) as provided under this subsection. A taxpayer that elects to
5 file a separate return as provided under this subsection and redeem
6 a voucher certificate under a voucher agreement entered pursuant to
7 this subsection and proceeding from an agreement entered pursuant
8 to section 434(5) for an amount equal to the employment expenses
9 and related engineering product development and administrative
10 costs for the support of integrated battery cells, anodes and
11 cathodes, and cell assembly shall create an additional 100 new jobs
12 in this state, for a total of 400 new jobs, and the maximum
13 allowable amount redeemed under this subsection or under section
14 510 shall not exceed \$25,000,000.00 per year for no more than 3
15 years. A taxpayer that elects to file as provided under this
16 subsection and redeem a voucher certificate under a voucher
17 agreement entered pursuant to this subsection and proceeding from
18 an agreement entered pursuant to section 434(5) shall not claim a
19 credit for any agreement entered pursuant to section 431 or 434(2).

20 **(8) A TAXPAYER DESCRIBED UNDER SECTION 117(5)(C) MAY, FOR THE**
21 **FIRST TAX YEAR ENDING AFTER THE ACQUISITION AND THE ASSIGNMENT OF**
22 **THE CERTIFICATED CREDIT OR CREDITS UNDER SECTION 431, 435, OR 437**
23 **IS COMPLETE ONLY, ELECT TO PAY THE TAX IMPOSED BY THIS ACT IN LIEU**
24 **OF THE TAX IMPOSED UNDER PART 2 OF THE INCOME TAX ACT OF 1967, 1967**
25 **PA 281, MCL 206.601 TO 206.699. A TAXPAYER THAT ELECTS PURSUANT TO**
26 **THIS SUBSECTION TO PAY THE TAX IMPOSED BY THIS ACT SHALL CONTINUE**
27 **TO FILE A RETURN AND PAY THE TAX IMPOSED UNDER THIS ACT FOR EACH**

1 TAX YEAR THEREAFTER UNTIL THAT CERTIFICATED CREDIT AND ANY
2 CARRYFORWARD FROM THAT CREDIT IS USED UP. A TAXPAYER THAT ELECTS
3 PURSUANT TO THIS SUBSECTION TO PAY THE TAX IMPOSED BY THIS ACT MAY
4 CLAIM ANY OTHER CERTIFICATED CREDIT THAT TAXPAYER WOULD BE ELIGIBLE
5 FOR IN THE YEAR IN WHICH THE TAXPAYER CLAIMS THE CERTIFICATED
6 CREDIT UNDER SECTION 431, 435, OR 437, BUT NOT ANY CERTIFICATED
7 CREDIT THAT WOULD HAVE ACCRUED IN ANY YEAR BEFORE THE ELECTION
8 UNDER THIS SUBSECTION. WHEN THE TAXPAYER'S CERTIFICATED CREDIT
9 UNDER SECTION 431, 435, OR 437 THAT WAS THE BASIS FOR THE
10 TAXPAYER'S ELECTION UNDER THIS SUBSECTION IS EXTINGUISHED, THE
11 TAXPAYER IS NO LONGER ELIGIBLE TO PAY THE TAX UNDER THIS ACT AND
12 MAY NO LONGER CLAIM ANY OTHER REMAINING CERTIFICATED CREDITS.

13 Sec. 505. (1) ~~An~~ EXCEPT AS OTHERWISE PROVIDED UNDER THIS
14 SUBSECTION, AN annual or final return shall be filed with the
15 department in the form and content prescribed by the department by
16 the last day of the fourth month after the end of the taxpayer's
17 tax year. Any final liability shall be remitted by the last day of
18 the fourth month after the end of the taxpayer's tax year. A
19 TAXPAYER THAT ELECTS TO FILE A RETURN UNDER THIS ACT PURSUANT TO
20 SECTION 680(5) OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL
21 206.680, FOR A TAX YEAR ENDING BEFORE THE ENACTMENT DATE OF THE
22 AMENDATORY ACT THAT ADDED THIS LANGUAGE SHALL NOTIFY THE DEPARTMENT
23 OF ITS ELECTION AND FILE AN ANNUAL RETURN FOR THAT TAX YEAR AND
24 EACH TAX YEAR THEREAFTER, IF APPLICABLE, WITHIN 4 MONTHS AFTER
25 MAKING THE ELECTION AND SHALL INCLUDE A COPY OF THE CORRESPONDING
26 AMENDED RETURN OR RETURNS FILED PURSUANT TO PART 2 OF THE INCOME
27 TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.699, NECESSARY AS

1 A RESULT OF THE ELECTION TO PAY THE TAX IMPOSED UNDER THIS ACT IN
2 LIEU OF THE TAX IMPOSED UNDER PART 2 OF THE INCOME TAX ACT OF 1967,
3 1967 PA 281, MCL 206.601 TO 206.699. A taxpayer, other than a
4 taxpayer subject to the tax imposed under chapter 2A or 2B, whose
5 apportioned or allocated gross receipts are less than \$350,000.00
6 does not need to file a return or pay the tax imposed under this
7 act.

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

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

20 (4) If a taxpayer is granted an extension of time within which
21 to file the federal income tax return for any tax year, the filing
22 of a copy of the request for extension together with a tentative
23 return and payment of an estimated tax with the department by the
24 due date provided in subsection (1) shall automatically extend the
25 due date for the filing of an annual or final return under this act
26 until the last day of the eighth month following the original due
27 date of the return. Interest at the rate under section 23(2) of

1 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
2 unpaid for the period of the extension.

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

5 Enacting section 2. This amendatory act does not take effect
6 unless Senate Bill No. _____ or House Bill No. 5557 (request no.
7 04969'16) of the 98th Legislature is enacted into law.