

HOUSE BILL NO. 5254

November 13, 2019, Introduced by Reps. Rabhi, Hope, Pohutsky, Hood, Wittenberg, Miller, Steven Johnson, Howell, Hoitenga, Haadsma, Sowerby, Brann and Reilly 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;
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



1 voluntarily elects for the taxpayer's first tax year ending after
2 December 31, 2011 to file a return and pay the tax imposed by this
3 act in order to claim a certificated credit or any unused
4 carryforward for that tax year shall continue to file a return and
5 pay the tax imposed under this act for each tax year thereafter
6 until that certificated credit and any carryforward from that
7 credit is used up. **For the 2019-2020 fiscal year, the total amount**
8 **of all certificated credits under sections 430, 431, 431a, 431b,**
9 **432, 434, and 450 that may be claimed shall not exceed**
10 **\$200,000,000.00. For the 2020-2021 fiscal year, the total amount of**
11 **all certificated credits under sections 430, 431, 431a, 431b, 432,**
12 **434, and 450 that may be claimed shall not exceed \$100,000,000.00.**
13 Except as otherwise provided under subsection (7), if a person
14 awarded a certificated credit is a member of a unitary business
15 group, the unitary business group, and not the member, shall file a
16 return and pay the tax, if any, under this act and claim the
17 certificated credit. Except as otherwise provided under subsection
18 (7), if the taxpayer that elects to file a return and pay the tax
19 imposed by this act in order to claim a certificated credit or any
20 unused carryforward of that credit for that tax year is a unitary
21 business group, the return filed by the unitary business group
22 shall include all persons included in the unitary business group
23 regardless of whether that person is incorporated. Notwithstanding
24 any other provision of this act or part 2 or 3 of the income tax
25 act of 1967, 1967 PA 281, MCL 206.601 to 206.713, in the case of a
26 flow-through entity that has made an election under this section,
27 each member of the flow-through entity that does not file as a
28 member of a unitary business group with the flow-through entity
29 shall disregard all items attributable to that member's ownership



1 interest in the electing flow-through entity for all purposes of
2 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to
3 206.699, and the electing flow-through entity shall not be subject
4 to the tax withholding provisions of section 703(4) of the income
5 tax act of 1967, 1967 PA 281, MCL 206.703, with respect to its
6 members that are corporations.

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

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



1 certificated credit under section 437(10) is complete and that
2 credit is used up. When the taxpayer's certificated credit under
3 section 435 or 437 that was the basis for the taxpayer's election
4 under subsection (2) is extinguished, the taxpayer is no longer
5 eligible to pay the tax under this act and may no longer claim any
6 other remaining certificated credits.

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

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

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

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



1 this act.

2 (ii) A taxpayer shall not include any nonrefundable
3 certificated credit to the extent that credit exceeds the
4 taxpayer's tax liability. Any nonrefundable credit remaining after
5 application of the limitation in this subparagraph may be carried
6 forward.

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

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

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

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



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

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



1 act for each tax year thereafter until the certificated credit
2 granted under section 36109 of the natural resources and
3 environmental protection act, 1994 PA 451, MCL 324.36109, is
4 complete and that credit is used up, or the taxpayer no longer owns
5 the property subject to the agreement, whichever occurs first. When
6 the taxpayer's certificated credit under section 36109 of the
7 natural resources and environmental protection act, 1994 PA 451,
8 MCL 324.36109, that was the basis for the taxpayer's election under
9 this subsection is extinguished, or the taxpayer no longer owns
10 that property under the agreement, whichever occurs first, 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 Enacting section 1. The Michigan business tax act, 2007 PA 36,
14 MCL 208.1101 to 208.1601, is repealed effective October 1, 2021 and
15 does not apply to business activity in this state after September
16 30, 2021.

