

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Senator Kowall

ENROLLED SENATE BILL No. 855

AN ACT to amend 2007 PA 36, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations,” by amending sections 107, 117, 434, 500, 510, and 511 (MCL 208.1107, 208.1117, 208.1434, 208.1500, 208.1510, and 208.1511), sections 107, 117, and 500 as amended by 2011 PA 209, section 434 as amended by 2010 PA 114, and section 510 as amended by 2011 PA 77.

The People of the State of Michigan enact:

Sec. 107. (1) “Certificated credit” means any of the following:

(a) A tax voucher certificate that has been issued to a taxpayer under an agreement entered into before January 1, 2012 under section 419 or section 23 of the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2253.

(b) A credit for which a preapproval letter has been issued to a qualified taxpayer under section 437 before January 1, 2012 to the extent the credit has not been fully claimed or paid prior to January 1, 2012.

(c) Except as otherwise provided under subdivision (i), a credit or voucher certificate for which a taxpayer or a qualified taxpayer has entered into an agreement with the Michigan economic growth authority under sections 430, 431, 431a, 431b, 431c, 432, 434, or 450 before January 1, 2012 to the extent the credit or voucher certificate has not been fully claimed or paid prior to January 1, 2012.

(d) A credit for which a taxpayer or eligible production company has entered into an agreement with the Michigan film office with the concurrence of the state treasurer under section 455 or 457 before January 1, 2012 to the extent the credit has not been fully claimed or paid before January 1, 2012.

(e) A credit for which a qualified taxpayer has received a part 2 approval, approved rehabilitation plan, approved high community impact rehabilitation plan, or preapproval letter from the state historic preservation office under section 435 before January 1, 2012 to the extent the credit has not been fully claimed or paid before January 1, 2012.

(f) A credit under section 433 but only for a taxpayer that has a development agreement executed between a taxpayer and the Michigan strategic fund before January 1, 2012 or for a taxpayer that has entered into a qualified collaborative agreement under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, before January 1, 2012. As used in this subsection, “qualified collaborative agreement” means that term as defined in section 8d of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2688d.

(g) A credit applicable to this act granted under section 36109 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36109.

(h) A credit allowed a taxpayer under section 409 if the taxpayer has met the capital expenditure requirements under section 409(4).

(i) A credit for which a taxpayer has entered into an agreement with the Michigan economic growth authority under section 434(6) before July 1, 2012.

(2) "Client" means an entity whose employment operations are managed by a professional employer organization.

(3) "Compensation" means all wages, salaries, fees, bonuses, commissions, other payments made in the tax year on behalf of or for the benefit of employees, officers, or directors of the taxpayers, and any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to a pension, retirement, or profit sharing plan other than those payments attributable to unfunded accrued actuarial liabilities, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payment of fees for the administration of health and welfare and noninsured benefit plans. Compensation for a taxpayer licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637, includes payments to an independent contractor licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637. Compensation does not include any of the following:

(a) Discounts on the price of the taxpayer's merchandise or services sold to the taxpayer's employees, officers, or directors that are not available to other customers.

(b) Except as otherwise provided in this subsection, payments to an independent contractor.

(c) Payments to state and federal unemployment compensation funds.

(d) The employer's portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233, and similar social insurance programs.

(e) Payments, including self-insurance payments, for worker's compensation insurance or federal employers' liability act insurance pursuant to 45 USC 51 to 60.

(4) "Corporation" means a taxpayer that is required or has elected to file as a corporation under the internal revenue code.

(5) "Department" means the department of treasury.

Sec. 117. (1) "Tangible personal property" means that term as defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

(2) "Tax" means the tax imposed under this act, including interest and penalties under this act, unless the term is given a more limited meaning in the context of this act or a provision of this act.

(3) "Tax-exempt person" means an organization that is exempt from federal income tax under section 501(a) of the internal revenue code, and a partnership, limited liability company, joint venture, unincorporated association, or other group or combination of organizations acting as a unit if all such organizations are exempt from federal income tax under section 501(a) of the internal revenue code and if all activities of the unit are exclusively related to the charitable, educational, or other purposes or functions that are the basis for the exemption of such organizations from federal income tax, except the following:

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

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

(4) "Tax year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this act. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act and except as otherwise provided under this subsection, a taxpayer's tax year is for the same period as is covered by its federal income tax return. A taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December of that tax year. If the term tax year in this act is used in reference to 1 or more previous or preceding tax years and those referenced tax years are before January 1, 2008, then those referenced tax years are deemed those same tax years during which former 1975 PA 228 was in effect. A taxpayer that has a fiscal tax year ending after December 31, 2011 is considered to have 2 separate tax years as follows: the first tax year is for the fractional part of the fiscal tax year before January 1, 2012, and the second tax year is for the fractional part of the fiscal tax year after December 31, 2011. Each short period tax return filed for each fractional part of the fiscal year pursuant to this subsection is considered an annual return under section 505.

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

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

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

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

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

(8) "Unrelated business activity" means, for a tax-exempt person, business activity directly connected with an unrelated trade or business as defined in section 513 of the internal revenue code.

Sec. 434. (1) The Michigan economic growth authority is authorized to enter into agreements to provide tax credits or voucher certificates available under this section to stimulate the domestic commercialization and affordability of high-power energy batteries, the lack of which today is limiting hybrid, plug-in hybrid battery-electric, and fuel cell vehicle applications, and to help insure that job growth from battery technology and commercial production develops alongside advanced vehicle technology development and renewable power generation initiatives both within and outside the transportation sector.

(2) Subject to the limitations provided under this section, for tax years that begin on or after January 1, 2010 and end before January 1, 2015, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will manufacture plug-in traction battery packs in this state may claim a credit against the tax imposed by this act for the manufacture of those plug-in traction battery packs as provided in this section. The Michigan economic growth authority may enter into more than 1 agreement under this section. However, the total number of plug-in traction battery packs eligible for all credits under all agreements allowed under this section shall not exceed the number of plug-in traction battery packs eligible for a credit as provided in this section and at least 1 agreement shall make capital investments of not less than \$200,000,000.00 not later than December 31, 2012. A taxpayer shall not claim a credit under this section for more than 3 years. The total of all credits allowed under this section shall be as follows:

(a) For tax years beginning after December 31, 2010 and ending before January 1, 2012, \$500.00 for an equivalent of 4 kilowatt hours of battery capacity plus \$125.00 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours of battery capacity not to exceed \$2,000.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 20,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed \$40,000,000.00.

(b) For tax years beginning after December 31, 2011 and ending before January 1, 2013, \$375.00 for an equivalent of 4 kilowatt hours of battery capacity plus \$93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours of battery capacity not to exceed \$1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 40,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed \$43,000,000.00. A single taxpayer shall not claim a credit for more than 25,000 plug-in traction battery pack units under this subdivision. The number of battery pack units not used for credits under subdivision (a) may be added to the total number of battery pack units for which a credit is available under this subdivision, and the credits for those units shall be calculated as described in subdivision (a) and shall be in addition to the maximums allowed for any 1 taxpayer under this subdivision or the total limits allowed under this subdivision.

(c) For tax years beginning after December 31, 2012 and ending before January 1, 2014, \$375.00 for an equivalent of 4 kilowatt hours of battery capacity plus \$93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours not to exceed \$1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 40,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed \$43,000,000.00. A single taxpayer shall not claim a credit for more than 25,000 plug-in traction battery pack units under this subdivision.

(d) For tax years beginning after December 31, 2013 and ending before January 1, 2015, \$375.00 for an equivalent of 4 kilowatt hours of battery capacity plus \$93.75 for each kilowatt hour of battery capacity in excess of 4 kilowatt hours not to exceed \$1,500.00 for each plug-in traction battery pack. The total number of traction battery packs shall not exceed 25,000 plug-in traction battery pack units under this subdivision, and the total amount of credits allowed under this subdivision shall not exceed \$9,000,000.00.

(3) For tax years that begin on or after January 1, 2012 and subject to the limitations of this subsection, a taxpayer may claim a credit of up to 75% of the qualified expenses for vehicle engineering in this state to support battery integration, prototyping, and launch expenses incurred for tax years that begin on or after January 1, 2009 and end before January 1, 2014. This credit shall not exceed \$15,000,000.00 per year as agreed to and certified by the Michigan economic growth authority. Any expenses for which a credit is claimed under this subsection shall not be included in costs and expenses used for credits available under sections 403 and 405. The Michigan economic growth authority may not authorize more than \$135,000,000.00 in total credits to all taxpayers under this subsection. To claim the credit under this subsection, a taxpayer must manufacture a cumulative total of at least 1,000 motor vehicles that would qualify for the credit under section 30D of the internal revenue code and the credit shall be available to the taxpayer only for the following percentages of the total authorized annual expenses:

(a) In a tax year in which the taxpayer has manufactured a cumulative total of at least 1,000 motor vehicles and fewer than 2,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 20%.

(b) In a tax year in which the taxpayer has manufactured a cumulative total of at least 2,000 motor vehicles but fewer than 3,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 40%.

(c) In a tax year in which the taxpayer has manufactured a cumulative total of at least 3,000 motor vehicles but fewer than 4,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 60%.

(d) In a tax year in which the taxpayer has manufactured a cumulative total of at least 4,000 motor vehicles but fewer than 5,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 80%.

(e) In a tax year in which the taxpayer has manufactured a cumulative total of at least 5,000 motor vehicles that qualify for the credit under section 30D of the internal revenue code, 100%.

(4) For tax years that begin on or after January 1, 2012 and end before January 1, 2015, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will increase its engineering activities in this state for advanced automotive battery technologies may claim a credit under this subsection. A taxpayer's qualified advanced battery engineering expenses for advanced automotive battery technologies shall exceed those expenses for the taxpayer's 2008 fiscal year to qualify for the credit under this subsection. The Michigan economic growth authority may enter into not more than 1 agreement for advanced battery engineering credits, and the total value of credits available under this subsection is limited to \$30,000,000.00. The credits under this subsection shall be allowed as follows:

(a) Up to 75% of the total dollar amount of the qualified advanced battery engineering expenses of an authorized business incurred during tax years beginning on or after January 1, 2009 and ending before January 1, 2014. The taxpayer must submit to the Michigan economic growth authority an affidavit certifying the amount of qualified advanced battery engineering expenses for each year.

(b) Notwithstanding any other provision of this section, a taxpayer may claim no more than \$10,000,000.00 in credits under this subsection in any tax year.

(c) The credits available under this subsection shall not be allowed if the taxpayer claims credits under subsection (2) for battery pack assembly for the tax year. Notwithstanding this limitation, the credits available under this subsection are in addition to any other incentives which may be authorized under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, for other related or unrelated projects including the vehicle research and development expenses authorized under subsection (3). Any expenses for which a credit is claimed under this subsection shall not be included in costs and expenses used for credits available under sections 403 and 405.

(5) Except as otherwise provided under section 500(7), a taxpayer that has entered into an agreement with the Michigan economic growth authority may claim a credit equal to 50% of the capital investment expenses for any tax year for the construction of an integrative cell manufacturing facility that includes anode and cathode manufacturing and cell assembly if the taxpayer will create not less than 300 new jobs in this state. Not more than 5 agreements may be entered into under this section, and the maximum allowable credit under each agreement shall not exceed \$25,000,000.00 per year for no more than 4 years. No credit shall be claimed in a tax year beginning before 2012. However, tax credits may be based on expenses incurred in this state in prior years. The Michigan economic growth authority shall not adopt a resolution authorizing an agreement to provide credits under this subsection after March 31, 2010.

(6) Subject to the limitations under this subsection, a taxpayer that has entered into an agreement with the Michigan economic growth authority may claim a credit equal to 25% of the capital investment expenses for any tax year for the construction of a facility that will produce at least 1 or more of the following: batteries, battery components, storage systems, battery thermal and management components or systems, AC or DC power supplies, power electronics,

battery formation and test equipment, or energy conversion devices including components related to such products of various sizes and capacities if the taxpayer agrees to create not fewer than 750 new jobs in this state. Not more than 1 agreement may be entered into under this subsection for a total credit of not more than \$50,000,000.00 over 4 years, and the maximum allowable credit under the agreement shall not exceed \$25,000,000.00 per year. No credit shall be claimed in a tax year beginning before 2012. The Michigan economic growth authority shall not adopt a resolution authorizing an agreement to provide a credit under this subsection after June 30, 2012.

(7) Subject to the limitations under subsection (8), for tax years that begin on or after January 1, 2012 and end before January 1, 2017, a taxpayer that has entered into an agreement with the Michigan economic growth authority that provides that the taxpayer will manufacture advanced lithium ion battery packs in this state may claim a credit against the tax imposed by this act for the manufacture of those advanced lithium ion battery packs as follows:

(a) For a taxpayer that agrees to make capital investments in this state of not less than \$250,000,000.00, to create at least 1,000 new jobs that shall include jobs that are transferred to this state from a foreign country, and to manufacture not less than 225,000 advanced lithium ion battery packs in this state, a total credit of not more than \$26,000,000.00 per tax year for no more than 3 tax years. The Michigan economic growth authority shall not adopt a resolution authorizing an agreement under this subdivision after March 1, 2010.

(b) For a taxpayer that agrees to make capital investments in this state of not less than \$200,000,000.00 and to create at least 300 new jobs, a total credit of not more than \$42,000,000.00 over 4 consecutive tax years unless otherwise provided under subsection (10). Unless the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available or that there are credits available under subsection (7)(a) for additional credits under this subdivision, the Michigan economic growth authority shall not adopt a resolution authorizing an agreement under this subdivision after March 1, 2010.

(8) Any capital investments made, jobs created, or expenses incurred pursuant to an agreement entered for a credit under subsection (7) or (9) shall be in addition to any other capital investments, jobs, or expenses used for any other credit available under this section and shall not be included or used for a credit available under any subsection other than subsection (7) or (9), respectively. A taxpayer that claims a credit under subsection (7)(a) shall not claim an additional credit under subsection (7)(b). For purposes of subsection (7), "new job" means a full-time job created by a taxpayer related to its advanced lithium ion battery activities, including its battery pack assembly facility, a cell manufacturing facility, and a motor vehicle assembly facility at which the battery pack is installed in a motor vehicle, or related battery engineering, that is in excess of the number of active full-time jobs the taxpayer maintained in this state prior to the effective date of the amendatory act that added this subsection as determined by the Michigan economic growth authority.

(9) Subject to the limitations of this subsection, if the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available, then for tax years that begin on or after January 1, 2015 and end before January 1, 2017 a taxpayer may claim a credit of up to 75% of the costs incurred during each tax year that begins on or after January 1, 2013 and ends before January 1, 2016 to implement a sourcing program to utilize battery cells from a business that has entered into an agreement under subsection (5) for the construction of an integrative cell manufacturing facility. Costs eligible for the credit under this subsection shall include payments for battery pack and vehicle engineering and associated design or integration including prototyping, facility, equipment or component retooling, and vehicle regulatory certification and shall include costs such as direct labor, purchases of capital equipment at cost, expensed supplies, intellectual property licensing, services, and financing, as determined and certified by the Michigan economic growth authority. Any costs for which a credit is claimed under this subsection shall not be included in costs and expenses used for credits available under sections 403 and 405. The Michigan economic growth authority may enter into more than 1 agreement under this subsection. The Michigan economic growth authority shall not authorize more than an amount equal to 25% of the previously issued credits available under subsection (6) as determined under subsection (10) in total credits to all taxpayers under this subsection. A single taxpayer shall not claim a credit of more than \$12,500,000.00 per year for no more than 2 years. To claim the credit under this subsection, a taxpayer must manufacture at least 10,000 motor vehicles in each year a credit is claimed at a facility in this state at which some of the costs eligible for a credit under this subsection are or were incurred. An agreement entered into under this subsection shall contain a repayment provision that if the taxpayer relocates its battery pack assembly facility for which credits are taken under subsection (7) outside of this state during the term of the agreement or subsequently substantially fails to meet the requirements of the agreement, as determined by the Michigan economic growth authority, the taxpayer shall have its credit reduced or terminated or have a percentage of the amount previously claimed under this subsection added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(10) If the Michigan economic growth authority determines that there are previously issued credits authorized under subsection (6) available, an amount equal to 25% of those previously issued credits may be used by the authority to enter into agreements for which a credit may be claimed under subsection (9) and an amount equal to 25% of those previously issued credits may be used by the authority to enter into additional agreements for which a credit may be claimed under subsection (7)(b). If the Michigan economic growth authority approves a total of less than \$78,000,000.00 in credits under subsection (7)(a), the Michigan economic growth authority may use the difference between \$78,000,000.00

and the total amount of credits approved under subsection (7)(a) to approve additional credits under subsection (7)(b). As used in this subsection and subsections (7) and (9), “previously issued credits” means the total amount of credits authorized by the authority for a taxpayer under subsection (6) that meets all of the following:

(a) The taxpayer did not use any or a portion of the credits authorized under the written agreement under subsection (6).

(b) The authority determined at a meeting upon a vote of the majority of the members present that the credits previously authorized satisfy subdivision (a).

(11) The Michigan economic growth authority shall appoint a review board to advise it about decisions concerning credits under subsection (5). The review board shall be composed of not fewer than 2 independent scientists. Additional experts may be sought on an ad hoc basis to review business plans and addressable markets. In making its recommendations, the review board shall give preference to technologies presenting novel materials, manufacturing, and performance qualities. The review board shall also consider all of the following:

(a) Business activities related to advanced battery technology occurring exclusively in Michigan.

(b) Activities directly related to whole cell production, from materials to large format cells, in Michigan.

(c) Scalability of manufacturing processes that are established, are robust, and address strategic global automotive market requirements.

(12) Credits under this section shall be taken after nonrefundable credits available under this act. If a credit or the sum of credits allowed under this section exceeds the tax liability of the taxpayer for the tax year, the taxpayer may elect to have that portion that exceeds the tax liability of the taxpayer refunded or to have the excess carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. Amounts carried forward shall not affect the maximum amount of credits that may be claimed in subsequent years.

(13) An agreement entered into for tax credits under this section shall specify all of the following:

(a) For credits provided under subsection (2), the number of plug-in traction battery packs eligible for a credit for each tax year covered by the period of the agreement and the maximum amount of the credit that may be claimed by the taxpayer in each tax year.

(b) If the taxpayer claims a credit under subsection (3), the qualified expenses for vehicle engineering, prototype, and launch costs and the annual and total dollar amount of the credits that may be claimed under subsection (3).

(c) If the taxpayer claims a credit under subsection (4), the total dollar amount of the credits that may be claimed under subsection (4).

(d) If a taxpayer claims a credit under subsection (5), all of the following:

(i) The location of the facility.

(ii) The estimated total cost of the facility.

(iii) The capital investment expenses that qualify for the credit under subsection (5).

(iv) The annual and total dollar amount of the credits that may be claimed under subsection (5).

(v) A repayment provision that if the taxpayer subsequently substantially fails to meet certain requirements of the agreement, as determined by the Michigan economic growth authority, the taxpayer may have its credit reduced or terminated or have a percentage of the amount previously claimed under subsection (5) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(e) If a taxpayer claims a credit under subsection (6), all of the following:

(i) The location of the facility.

(ii) The estimated total cost of the facility.

(iii) The capital investment expenses that qualify for the credit under subsection (6).

(iv) The annual and total dollar amount of the credits that may be claimed under subsection (6).

(v) The minimum number of new jobs to be created in this state each year to qualify for the credit under subsection (6).

(vi) A repayment provision that if the taxpayer subsequently substantially fails to meet certain requirements of the agreement, as determined by the Michigan economic growth authority, the taxpayer may have its credit reduced or terminated or have a percentage of the amount previously claimed under subsection (6) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement.

(vii) A provision that, if the taxpayer fails to create 750 new jobs, the taxpayer shall have its credit reduced by \$65,000.00 for each job less than 750 that was not created and, if the taxpayer fails to create at least 500 new jobs, a provision regarding an additional clawback of any credit or benefit received pursuant to the agreement.

(f) If a taxpayer claims a credit under subsection (7), all of the following:

(i) A provision that the taxpayer agrees to make a good faith effort to utilize Michigan suppliers and vendors when purchasing components and services related to the production of advanced lithium ion battery packs for which a credit

is claimed in the 2012, 2013, and 2014 tax years. For a credit during the 2015 and 2016 tax years, a provision that the taxpayer shall utilize cells from a business that has entered into an agreement under subsection (5) for the construction of an integrative cell manufacturing facility.

(ii) A repayment provision that if the taxpayer relocates its advanced lithium ion battery pack assembly facility that produces the battery pack units for which the credit is claimed under subsection (7) outside of this state during the term of the agreement or subsequently fails to meet the capital investment or new jobs requirements of the agreement entered into for a credit under subsection (7), as determined by the Michigan economic growth authority, the taxpayer shall have a percentage of the amount previously claimed under subsection (7) added back to the tax liability of the taxpayer in the year that the taxpayer fails to comply with the agreement entered into for a credit under subsection (7) and shall have its credit terminated or reduced prospectively.

(iii) The minimum number of advanced lithium ion battery packs to be manufactured to be eligible for a credit for each tax year covered by the period of the agreement and the maximum amount of the credit that may be claimed by the taxpayer in each tax year.

(iv) The capital investment that qualifies for the credit under subsection (7).

(v) The minimum number of new jobs to be created in this state to qualify for the credit under subsection (7).

(14) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the annual return filed under this act on which a credit under this section is claimed. The certificate required under this subsection shall state all of the following:

(a) The taxpayer is located in this state and engaged in activity that qualifies for the credit under this section.

(b) The taxpayer's federal employer identification number or the Michigan department of treasury number assigned to the taxpayer and, for a taxpayer that is a unitary business group, the federal employer identification number or Michigan department of treasury number assigned to the member of the group engaged in this state in activity that qualifies for a credit under this section.

(c) If applicable, the number of plug-in traction battery pack units or advanced lithium ion battery pack units manufactured by the taxpayer during the designated tax year and the amount of the credit under this section for which the taxpayer is allowed to claim for the designated tax year.

(d) For credits available under subsections (3), (4), (5), (6), (7), and (9), the amount of the credit available for the tax year and such other information as may be required by the department.

(15) For project agreements created under subsection (6) before July 1, 2012 and for project agreements amended after December 1, 2011 but before July 1, 2012 under subsection (5), the Michigan strategic fund shall report to the chair and minority vice-chair of the house and senate subcommittees on general government, the house commerce committee, and the senate economic development committee annually beginning January 1, 2014 and every January 1 thereafter, and ending with a final report on January 1, 2020. The report shall detail each of the projects individually and shall separately list direct jobs created, direct revenue created, indirect jobs created, and indirect revenue created for each of those projects.

(16) As used in this section:

(a) "Advanced automotive battery technology" means a rechargeable lithium battery that supports vehicle propulsion or other advanced technologies as may be further defined by the Michigan economic growth authority.

(b) "Advanced lithium ion battery pack" means an assembled unit of battery cells containing rechargeable lithium ion chemistry designed and mass-produced for the purpose of transportation, including defense and commercial applications.

(c) "Battery cell" means the basic electrochemical unit that provides a source of electrical energy by direct conversion of chemical energy and consists of an assembly of electrodes, separators, electrolyte, container, and terminals.

(d) "Capital investment" means expenses incurred during the tax year and included in an agreement under this section that are associated with facilities, equipment, tooling and engineering, and manufacturing, including salaries, contract services, taxes, utilities, raw materials, and supplies.

(e) "Michigan economic growth authority" means the Michigan economic growth authority created in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(f) "Plug-in traction battery pack" means an electrochemical energy storage device that meets the following requirements:

(i) Has a traction battery capacity of not less than 4.0 kilowatt hours.

(ii) Is equipped with an electrical plug by means of which it can be energized and recharged when plugged into an external source of power.

(iii) Consists of standardized configuration and is mass-produced.

(iv) Has been tested and approved by the national highway transportation safety administration as compliant with applicable motor vehicle and motor vehicle equipment safety standards when installed by a mechanic with standardized training in protocols established by the manufacturer as part of a nationwide distribution program.

(v) Is installed in a new qualified plug-in electric drive motor vehicle that qualifies for the credit under section 30D of the internal revenue code.

(g) "Qualified advanced battery engineering expenses" means that part of a taxpayer's qualified research expenses as defined under section 41(b) of the internal revenue code related to engineering research and development related to advanced automotive battery technology.

(h) "Qualified expenses for vehicle engineering" means that part of a taxpayer's expenses for activities within this state related to integrating batteries into a motor vehicle that would qualify for the credit under section 30D of the internal revenue code including such qualified research expenses as defined under section 41(b) of the internal revenue code.

(i) "Traction battery capacity" is the number of kilowatt hours measured from a 100% state of charge to a 0% state of charge.

Sec. 500. (1) Except as otherwise provided in subsection (2) or (7), 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.

(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 206.713. 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 206.713, 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 206.713, 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 206.713, 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 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).

Sec. 510. (1) If a certificate of completion, assignment certificate, or component completion certificate is issued for a tax year beginning after December 31, 2011 under section 437 to a taxpayer or if a certificate of completed rehabilitation, assignment certificate, or reassignment certificate is issued for a tax year beginning after December 31, 2011 under section 435 to a taxpayer, beginning on and after January 1, 2012 the taxpayer may elect to claim a refundable credit for 90% of the amount of that certificate. The claim may be filed before the end of the tax year, and the department shall pay the refundable credit within 60 days after receiving the claim. A taxpayer claiming a credit under this section shall forgo the remaining 10% of the credit.

(2) If section 437 or 435 provides that payment of a credit will be made over a period of years or limits the annual amount of a payment, a refundable credit may only be claimed under subsection (1) for the amount payable in the year claimed. A taxpayer may elect to claim a refundable credit under subsection (1) in each year that a credit is payable under section 437 or 435. Notwithstanding the foregoing, a taxpayer may elect under subsection (1) to claim the balance of a refundable credit awarded under section 435(20), but the amount of that refund shall be equal to 86% of the amount of the credit and the taxpayer shall forgo the remaining 14% of the credit.

(3) Notwithstanding the provisions of section 437(18) and section 435(9), for tax years ending after December 31, 2011, a taxpayer may not claim a refundable credit under section 437(18) or section 435(9) and may only claim a refundable credit under sections 437 and 435 as provided in subsection (1) or (2).

(4) If a voucher certificate is issued for a tax year beginning after December 31, 2011 under section 500(7) to a taxpayer, beginning on and after January 1, 2012 the taxpayer may elect to redeem a refundable voucher certificate subject only to the annual limitations and conditions provided under section 500(7). The claim may be filed before the end of the tax year, and the department shall pay the refundable certificate within 60 days after receiving the claim.

Sec. 511. Except as otherwise provided under section 500(7), a unitary business group shall file a combined return that includes each United States person, other than a foreign operating entity, that is included in the unitary business group. Each United States person included in a unitary business group or included in a combined return shall be treated as a single person and all transactions between those persons included in the unitary business group shall be eliminated from the business income tax base, modified gross receipts tax base, and the apportionment formula under this act. If a United States person included in a unitary business group or included in a combined return is subject to the tax under chapter 2A or 2B, any business income attributable to that person shall be eliminated from the business income tax base, any modified gross receipts attributable to that person shall be eliminated from the modified gross receipts tax base, and any sales attributable to that person shall be eliminated from the apportionment formula under this act.

Enacting section 1. This amendatory act takes effect January 1, 2012.

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.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

.....
Governor