

HOUSE BILL No. 4362

March 1, 2011, Introduced by Rep. Gilbert and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 107 and 117 (MCL 208.1107 and 208.1117), section 117 as amended by 2009 PA 142, and by adding section 500; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 107. (1) "CERTIFICATED CREDIT" MEANS ANY OF THE FOLLOWING
2 CREDITS FOR WHICH A CERTIFICATE HAS BEEN ISSUED TO THE TAXPAYER
3 PRIOR TO JANUARY 1, 2012 BUT THE PROJECT HAS NOT BEEN COMPLETED OR
4 FOR WHICH THE TAXPAYER HAS ENTERED INTO AN AGREEMENT PRIOR TO
5 JANUARY 1, 2012 BUT THE CREDIT HAS NOT BEEN CLAIMED OR PAID PRIOR
6 TO JANUARY 1, 2012:

7 (A) SECTION 419, 430, 431, 431A, 431B, 431C, 432, 434, 435,
8 437, 450, 455, 457, OR 459.

1 (B) SECTION 433 BUT ONLY FOR THOSE RENAISSANCE ZONES
2 DESIGNATED PURSUANT TO SECTION 8C, 8D, 8E, 8F, 8G, OR 8H OF THE
3 MICHIGAN RENAISSANCE ZONE ACT, 1996 PA 376, MCL 125.2688C,
4 125.2688D, 125.2688E, 125.2688F, 125.2688G, AND 125.2688H.

5 (C) SECTION 36109 OF THE NATURAL RESOURCES AND ENVIRONMENTAL
6 PROTECTION ACT, 1994 PA 451, MCL 324.36109.

7 (2) ~~(1)~~—"Client" means an entity whose employment operations
8 are managed by a professional employer organization.

9 (3) ~~(2)~~—"Compensation" means all wages, salaries, fees,
10 bonuses, commissions, other payments made in the tax year on behalf
11 of or for the benefit of employees, officers, or directors of the
12 taxpayers, and any earnings that are net earnings from self-
13 employment as defined under section 1402 of the internal revenue
14 code of the taxpayer or a partner or limited liability company
15 member of the taxpayer. Compensation includes, but is not limited
16 to, payments that are subject to or specifically exempt or excepted
17 from withholding under sections 3401 to 3406 of the internal
18 revenue code. Compensation also includes, on a cash or accrual
19 basis consistent with the taxpayer's method of accounting for
20 federal income tax purposes, payments to a pension, retirement, or
21 profit sharing plan other than those payments attributable to
22 unfunded accrued actuarial liabilities, and payments for insurance
23 for which employees are the beneficiaries, including payments under
24 health and welfare and noninsured benefit plans and payment of fees
25 for the administration of health and welfare and noninsured benefit
26 plans. Compensation for a taxpayer licensed under article 25 or 26
27 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and

1 339.2601 to 339.2637, includes payments to an independent
2 contractor licensed under article 25 or 26 of the occupational
3 code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to
4 339.2637. Compensation does not include any of the following:

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

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

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

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

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

20 (4) ~~(3)~~—"Corporation" means a taxpayer that is required or has
21 elected to file as a corporation under the internal revenue code.

22 (5) ~~(4)~~—"Department" means the department of treasury.

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

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

1 this act.

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

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

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

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

1 December of that tax year. If the term tax year in this act is used
2 in reference to 1 or more previous or preceding tax years and those
3 referenced tax years are before January 1, 2008, then those
4 referenced tax years are deemed those same tax years during which
5 former 1975 PA 228 was in effect.

6 (5) "Taxpayer" means, **THROUGH DECEMBER 31, 2011**, a person or a
7 unitary business group liable for a tax, interest, or penalty under
8 this act. **BEGINNING JANUARY 1, 2012, TAXPAYER MEANS EITHER OF THE**
9 **FOLLOWING:**

10 (A) A PERSON OR UNITARY BUSINESS GROUP THAT HAS A CERTIFICATED
11 CREDIT BUT IS NOT SUBJECT TO THE TAX IMPOSED UNDER PART 2 OF THE
12 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.697, AND
13 THAT ELECTS DURING THE FIRST TAX YEAR AFTER THE EFFECTIVE DATE OF
14 THE AMENDATORY ACT THAT ADDED SECTION 500 TO FILE A RETURN AND PAY
15 THE TAX IMPOSED UNDER THIS ACT.

16 (B) A PERSON OR UNITARY BUSINESS GROUP THAT HAS A CERTIFICATED
17 CREDIT AND THAT ELECTED UNDER SECTION 680 OF THE INCOME TAX ACT OF
18 1967, 1967 PA 281, MCL 206.680, TO FILE A RETURN AND PAY THE TAX
19 IMPOSED UNDER THIS ACT.

20 (6) "Unitary business group" means a group of United States
21 persons, other than a foreign operating entity, 1 of which owns or
22 controls, directly or indirectly, more than 50% of the ownership
23 interest with voting rights or ownership interests that confer
24 comparable rights to voting rights of the other United States
25 persons, and that has business activities or operations which
26 result in a flow of value between or among persons included in the
27 unitary business group or has business activities or operations

1 that are integrated with, are dependent upon, or contribute to each
2 other. For purposes of this subsection, flow of value is determined
3 by reviewing the totality of facts and circumstances of business
4 activities and operations.

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

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

11 **SEC. 500. (1) A TAXPAYER DESCRIBED UNDER SECTION 117(5) (A)**
12 **THAT VOLUNTARILY ELECTS DURING THE TAXPAYER'S FIRST TAX YEAR AFTER**
13 **THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION TO**
14 **FILE A RETURN AND PAY THE TAX IMPOSED BY THIS ACT IN ORDER TO CLAIM**
15 **A CERTIFICATED CREDIT SHALL CONTINUE TO FILE A RETURN AND PAY THE**
16 **TAX IMPOSED UNDER THIS ACT FOR EACH TAX YEAR THEREAFTER UNTIL THAT**
17 **CERTIFICATED CREDIT AND ANY CARRYFORWARD FROM THAT CREDIT IS ALL**
18 **USED UP.**

19 (2) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2011, A
20 TAXPAYER'S TAX LIABILITY UNDER THIS ACT SHALL BE THE GREATER OF THE
21 FOLLOWING:

22 (A) THE AMOUNT OF THE TAXPAYER'S TAX LIABILITY UNDER THIS ACT.

23 (B) AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT OF
24 THE TAXPAYER'S TAX LIABILITY UNDER PART 2 OF THE INCOME TAX ACT OF
25 1967, 1967 PA 281, MCL 206.601 TO 206.697, IF THE TAXPAYER WAS
26 SUBJECT TO THE TAX IMPOSED UNDER PART 2 OF THE INCOME TAX ACT OF
27 1967, 1967 PA 281, MCL 206.601 TO 206.697, AND THE TOTAL AMOUNT OF

1 CERTIFICATED CREDITS THAT THE TAXPAYER WAS ALLOWED TO CLAIM DURING
2 THE TAX YEAR UNDER THIS ACT.

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

8 Enacting section 2. This amendatory act does not take effect
9 unless Senate Bill No. _____ or House Bill No. 4361(request no.
10 01879'11) of the 96th Legislature is enacted into law.