

SENATE BILL No. 1163

November 10, 2016, Introduced by Senator BRANDENBURG and referred to the Committee on Finance.

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

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

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

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

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

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

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

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

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

Senate Bill No. 1163 as amended December 8, 2016

1 under section 680 of the income tax act of 1967, 1967 PA 281, MCL
 2 206.680, to file a return and pay the tax imposed under this act is
 3 part of a unitary business group as defined under this act, the
 4 unitary business group as defined under this act shall file the
 5 return and pay the tax, if any, under this act.

6 (C) A PERSON OR UNITARY BUSINESS GROUP THAT ACQUIRES BY
 <<REORGANIZATION IN ACCORDANCE WITH SECTION 708(B)(2) OR SECTIONS
 368(A)(1) AND 304(C) OF THE INTERNAL REVENUE CODE OR BY>> MERGER
 7 ALL RIGHTS, PRIVILEGES, AND LIABILITIES OF ANOTHER PERSON OR MEMBER
 8 OF ANOTHER UNITARY BUSINESS GROUP THAT HAS BEEN APPROVED TO
 9 RECEIVE, HAS RECEIVED, OR HAS BEEN ASSIGNED A CERTIFICATED CREDIT
 10 UNDER SECTION 431, <<432,>> 435, OR 437 AND THE SURVIVING PERSON OR THE
 11 UNITARY BUSINESS GROUP OF WHICH THE SURVIVING PERSON IS A MEMBER
 12 ELECTED UNDER SECTION 680(5) OF THE INCOME TAX ACT OF 1967, 1967 PA
 13 281, MCL 206.680, TO FILE A RETURN AND PAY THE TAX IMPOSED UNDER
 14 THIS ACT, IF ANY.

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

27 (7) "United States person" means that term as defined in

1 section 7701(a)(30) of the internal revenue code.

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

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

1 to 206.713, in the case of a flow-through entity that has made an
2 election under this section, each member of the flow-through entity
3 that does not file as a member of a unitary business group with the
4 flow-through entity shall disregard all items attributable to that
5 member's ownership interest in the electing flow-through entity for
6 all purposes of part 2 of the income tax act of 1967, 1967 PA 281,
7 MCL 206.601 to 206.699, and the electing flow-through entity shall
8 not be subject to the tax withholding provisions of section 703(4)
9 of the income tax act of 1967, 1967 PA 281, MCL 206.703, with
10 respect to its members that are corporations.

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

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

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

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

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

21 (b) An amount equal to the taxpayer's tax liability as
22 computed pursuant to part 2 of the income tax act of 1967, 1967 PA
23 281, MCL 206.601 to 206.699, after application of all credits,
24 deductions, and exemptions under part 2 of the income tax act of
25 1967, 1967 PA 281, MCL 206.601 to 206.699, as if the taxpayer were
26 subject to the tax imposed under part 2 of the income tax act of
27 1967, 1967 PA 281, MCL 206.601 to 206.699, less the amount of the

1 taxpayer's certificated credits, including any unused carryforward
2 of a certificated credit, that the taxpayer was allowed to claim
3 for the tax year under this act. However, in calculating the amount
4 under this subdivision, the following apply:

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

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

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

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

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

27 (7) Subject to the limitations provided under this subsection,

Senate Bill No. 1163 as amended December 8, 2016

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

22 (8) A TAXPAYER DESCRIBED UNDER SECTION 117(5)(C) MAY, ONLY FOR
 23 THE FIRST TAX YEAR ENDING AFTER THE EFFECTIVE DATE OF THE
 24 ACQUISITION OF A CERTIFICATED CREDIT OR CREDITS UNDER SECTION 431,
 25 <<432,>>
 26 435, OR 437 RESULTING FROM A <<REORGANIZATION OR>> MERGER, ELECT
 27 TO PAY THE TAX IMPOSED
 BY THIS ACT IN LIEU OF THE TAX IMPOSED UNDER PART 2 OF THE INCOME
 TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.699. A TAXPAYER

Senate Bill No. 1163 as amended December 8, 2016

1 THAT ELECTS PURSUANT TO THIS SUBSECTION TO PAY THE TAX IMPOSED BY
2 THIS ACT SHALL CONTINUE TO FILE A RETURN AND PAY THE TAX IMPOSED
3 UNDER THIS ACT FOR EACH TAX YEAR THEREAFTER UNTIL THAT CERTIFICATED
4 CREDIT AND ANY CARRYFORWARD FROM THAT CREDIT IS USED UP. THE TERMS,
5 CONDITIONS, AND AMOUNT OF A CERTIFICATED CREDIT THAT WERE
6 ATTRIBUTABLE TO THE PERSON OR MEMBER OF A UNITARY BUSINESS GROUP
7 WHOSE EXISTENCE WAS TERMINATED BY MERGER SHALL CONTINUE AND SHALL
8 NOT BE EXPANDED IN ANY MANNER THAT WOULD INCREASE THE NET AMOUNT OF
9 THAT CERTIFICATED CREDIT AS A RESULT OF AN ELECTION MADE UNDER THIS
10 SUBSECTION. A TAXPAYER THAT ELECTS PURSUANT TO THIS SUBSECTION TO
11 PAY THE TAX IMPOSED BY THIS ACT MAY CLAIM ANY OTHER CERTIFICATED
12 CREDIT THAT THE FORMER TAXPAYER WHOSE EXISTENCE WAS TERMINATED BY
13 THE <<REORGANIZATION OR>> MERGER WOULD HAVE BEEN ELIGIBLE TO CLAIM IN
14 THE TAX YEAR IN
15 WHICH THE TAXPAYER CLAIMS THE CERTIFICATED CREDIT UNDER SECTION
16 431, <<432,>> 435, OR 437, BUT NOT ANY CERTIFICATED CREDIT THAT WOULD
17 HAVE
18 ACCRUED IN ANY TAX YEAR BEFORE THE ELECTION UNDER THIS SUBSECTION.
19 A TAXPAYER THAT ELECTS PURSUANT TO THIS SUBSECTION TO PAY THE TAX
20 IMPOSED BY THIS ACT IS NOT ELIGIBLE TO CLAIM ANY OTHER CERTIFICATED
21 CREDIT FOR WHICH AN ELECTION COULD HAVE BEEN MADE BY THE TAXPAYER
22 UNDER SUBSECTION (1) FOR THE TAXPAYER'S FIRST TAX YEAR ENDING AFTER
23 DECEMBER 31, 2011. WHEN THE TAXPAYER'S CERTIFICATED CREDIT UNDER
24 SECTION 431, <<432,>> 435, OR 437 THAT WAS THE BASIS FOR THE TAXPAYER'S
25 ELECTION UNDER THIS SUBSECTION IS EXTINGUISHED, THE TAXPAYER IS NO
26 LONGER ELIGIBLE TO PAY THE TAX UNDER THIS ACT AND MAY NO LONGER
27 CLAIM ANY OTHER REMAINING CERTIFICATED CREDITS.

26 Sec. 505. (1) ~~An~~ EXCEPT AS OTHERWISE PROVIDED UNDER THIS
27 SUBSECTION, AN annual or final return shall be filed with the

1 department in the form and content prescribed by the department by
2 the last day of the fourth month after the end of the taxpayer's
3 tax year. Any final liability shall be remitted by the last day of
4 the fourth month after the end of the taxpayer's tax year. **A**
5 **TAXPAYER THAT ELECTS TO FILE A RETURN UNDER THIS ACT PURSUANT TO**
6 **SECTION 680(5) OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL**
7 **206.680, FOR A TAX YEAR ENDING BEFORE THE ENACTMENT DATE OF THE**
8 **AMENDATORY ACT THAT ADDED THIS LANGUAGE SHALL NOTIFY THE DEPARTMENT**
9 **OF ITS ELECTION AND FILE AN ANNUAL RETURN FOR THAT TAX YEAR AND**
10 **EACH TAX YEAR THEREAFTER, IF APPLICABLE, WITHIN 4 MONTHS AFTER**
11 **MAKING THE ELECTION AND SHALL INCLUDE A COPY OF THE CORRESPONDING**
12 **AMENDED RETURN OR RETURNS FILED PURSUANT TO PART 2 OF THE INCOME**
13 **TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.699. THE**
14 **DEPARTMENT MAY REQUIRE DOCUMENTATION FROM THE TAXPAYER THAT ELECTS**
15 **TO FILE A RETURN UNDER THIS ACT PURSUANT TO SECTION 680(5) OF THE**
16 **INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.680, TO SUPPORT THE**
17 **MERGER AND THE ACQUISITION OF THE CERTIFICATED CREDIT OR CREDITS**
18 **THAT ARE THE BASIS FOR THE ELECTION.** A taxpayer, other than a
19 taxpayer subject to the tax imposed under chapter 2A or 2B, whose
20 apportioned or allocated gross receipts are less than \$350,000.00
21 does not need to file a return or pay the tax imposed under this
22 act.

23 (2) If a taxpayer has apportioned or allocated gross receipts
24 for a tax year of less than 12 months, the amount in subsection (1)
25 shall be multiplied by a fraction, the numerator of which is the
26 number of months in the tax year and the denominator of which is
27 12.

1 (3) The department, upon application of the taxpayer and for
2 good cause shown, may extend the date for filing the annual return.
3 Interest at the rate under section 23(2) of 1941 PA 122, MCL
4 205.23, shall be added to the amount of the tax unpaid for the
5 period of the extension. The treasurer shall require with the
6 application payment of the estimated tax liability unpaid for the
7 tax period covered by the extension.

8 (4) If a taxpayer is granted an extension of time within which
9 to file the federal income tax return for any tax year, the filing
10 of a copy of the request for extension together with a tentative
11 return and payment of an estimated tax with the department by the
12 due date provided in subsection (1) shall automatically extend the
13 due date for the filing of an annual or final return under this act
14 until the last day of the eighth month following the original due
15 date of the return. Interest at the rate under section 23(2) of
16 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
17 unpaid for the period of the extension.

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

20 Enacting section 2. This amendatory act does not take effect
21 unless House Bill No. 5557 of the 98th Legislature is enacted into
22 law.