

HOUSE BILL No. 4334

March 11, 2015, Introduced by Reps. Glenn, Farrington and Chatfield 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 2013 PA 233 and by adding section 402.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 402. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT,
2 BEGINNING ON AND AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
3 THAT ADDED THIS SECTION, THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR
4 ITS SUCCESSOR SHALL NOT MODIFY OR AMEND AN EXISTING WRITTEN
5 AGREEMENT WITH A TAXPAYER FOR A CERTIFICATED CREDIT, UNLESS THE
6 MODIFICATION OR AMENDMENT REDUCES THE NET AMOUNT OF THE CREDIT TO
7 THE TAXPAYER. HOWEVER, THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR
8 ITS SUCCESSOR MAY MODIFY OR AMEND AN EXISTING WRITTEN AGREEMENT FOR
9 TECHNICAL CHANGES AS LONG AS THE MODIFICATION OR AMENDMENT DOES NOT
10 INCREASE THE NET AMOUNT OF THE CREDIT. UNDER NO CIRCUMSTANCES SHALL

1 THE MICHIGAN ECONOMIC GROWTH AUTHORITY OR ITS SUCCESSOR MODIFY OR
2 AMEND ON EXISTING WRITTEN AGREEMENT TO PROVIDE THE TAXPAYER WITH A
3 LONGER TERM TO CLAIM THAT CREDIT.

4 Sec. 500. (1) Except as otherwise provided in subsection (2)
5 or (7), a taxpayer described under section 117(5)(a) or under
6 section 680 of the income tax act of 1967, 1967 PA 281, MCL
7 206.680, that voluntarily elects for the taxpayer's first tax year
8 ending after December 31, 2011 to file a return and pay the tax
9 imposed by this act in order to claim a certificated credit or any
10 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 **SUBCHAPTER S**
14 corporation, business income includes payments and items of income
15 and expense that are attributable to business activity of the
16 partnership or S corporation and separately reported to the
17 members.

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

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

26 (7) Subject to the limitations provided under this subsection,
27 a taxpayer that is a member of a unitary business group and that

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