

# HOUSE BILL NO. 5022

September 20, 2023, Introduced by Reps. Farhat and Scott and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 813, 831, and 839 (MCL 206.813, 206.831, and 206.839), as added by 2021 PA 135.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 813. For tax years beginning on and after January 1,  
2 2021, a flow-through entity may, in a form and manner as prescribed  
3 by the department, elect to file a return and pay the tax imposed  
4 by this part. Except as otherwise provided under this section, an  
5 election made under this section is an irrevocable election that

1 shall continue for the next 2 subsequent tax years and the taxpayer  
 2 shall continue to file a return and pay the tax imposed under this  
 3 part as provided in section 833. ~~A-For the 2022 and 2023 tax years,~~  
 4 **a flow-through entity that elects to pay the tax imposed under this**  
 5 **part shall file its election with the department on or before the**  
 6 **fifteenth day of the third month of that tax year. However, an**  
 7 **election made for any tax year beginning in 2021 must be made**  
 8 **before the fifteenth day of the fourth calendar month after the**  
 9 **effective date of the amendatory act that added this section. April**  
 10 **15, 2022. Beginning with the 2024 tax year, a flow-through entity**  
 11 **that elects to pay the tax imposed under this part shall file its**  
 12 **election with the department on or before the due date of a timely**  
 13 **filed return for that tax year, including any extension.** A separate  
 14 election must be made after the expiration of the irrevocable  
 15 period described in this section to continue to pay the tax imposed  
 16 by this part. If, in accordance with section 847, the tax is not  
 17 levied and imposed during any tax year, for any subsequent tax year  
 18 that the tax is levied and imposed under this part, regardless of  
 19 whether the taxpayer had previously made an election to pay under  
 20 this section, the taxpayer is required to make a separate election  
 21 to pay under this section.

22       Sec. 831. (1) Except as otherwise provided under this section,  
 23 a taxpayer that reasonably expects liability for the tax year to  
 24 exceed \$800.00 shall file an estimated return and pay an estimated  
 25 tax for each quarter of the taxpayer's tax year in the same manner  
 26 as provided in section 301.

27       (2) The interest and penalty provided by this part shall not  
 28 be assessed for the 2022 tax year and ~~each subsequent~~ **2023** tax  
 29 year, if the preceding year's tax liability under this part was

1 \$20,000.00 or less and if the taxpayer submitted 4 equal  
2 installments the sum of which equals the immediately preceding tax  
3 year's tax liability. **For the 2024 tax year and each subsequent tax**  
4 **year, both of the following apply:**

5 (a) The interest and penalty provided by this part shall not  
6 be assessed if the taxpayer submitted 4 equal installments the sum  
7 of which equals at least 1 of the following:

8 (i) 90% of the taxpayer's current year's tax liability.

9 (ii) 100% of the taxpayer's previous year's tax liability.

10 (iii) 110% of the taxpayer's previous year's tax liability if  
11 the taxpayer's previous year's adjusted gross income is more than  
12 \$150,000.00 or more than \$75,000.00 for a taxpayer filing a married  
13 filing separate return.

14 (b) The interest and penalty provided by this part shall not  
15 be assessed for any quarterly estimated payment due prior to the  
16 taxpayer making the election to pay the tax due under this part for  
17 that tax year, unless the department determines that the deficiency  
18 is due to the taxpayer's intentional disregard of the law.

19 (3) Each estimated return shall be made on a form prescribed  
20 by the department and shall include an estimate of the annual tax  
21 liability and other information required by the state treasurer.  
22 The form prescribed under this subsection may be combined with any  
23 other tax reporting form prescribed by the department.

24 (4) Payments made under this section shall be a credit against  
25 the payment required with the annual tax return required in section  
26 833.

27 (5) If the department considers it necessary to insure payment  
28 of the tax or to provide a more efficient administration of the  
29 tax, the department may require filing of the returns and payment

1 of the tax for other than quarterly or annual periods.

2       Sec. 839. (1) A taxpayer or a flow-through entity that did not  
3 make the election under section 813 shall provide on or before the  
4 due date of the return under section 833, upon the amendment of a  
5 return filed under section 833 or the adjustment of the tax under  
6 this part by the department, to any member to which the provision  
7 of information is required by the internal revenue code all of the  
8 following for the tax year:

9       (a) Information regarding the allocation and apportionment of  
10 the business income described under this part and the allocation  
11 and apportionment of income subject to tax under part 1 and part 2.

12       (b) The member's allocable share of the reporting flow-through  
13 entity's taxes calculated under section 815(2)(e) on or measured by  
14 net income including the tax imposed by this part for the tax year.  
15 The member's allocable share of taxes calculated under section  
16 815(2)(e) and allocated to the reporting flow-through entity by  
17 other flow-through entities with tax years ending on or within the  
18 reporting flow-through entity's tax year.

19       (c) The member's allocable share of the reporting flow-through  
20 entity's refund calculated under section 815(2)(g). The member's  
21 allocable share of refunds calculated under section 815(2)(g) and  
22 allocated to the reporting flow-through entity by other flow-  
23 through entities with tax years ending on or within the reporting  
24 flow-through entity's tax year.

25       (d) Each of the following:

26       (i) The member's share of the tax imposed under this part on  
27 the taxpayer for the tax year and paid ~~by the fifteenth day of the~~  
28 ~~third month after the end of the tax year.~~ **on a timely filed return**  
29 **for the tax year, including any extension.**

1           (ii) The member's share of the tax imposed under this part on  
2 the taxpayer for any prior tax year and paid ~~within the tax year~~  
3 ~~excluding any amount reported under subparagraph (i) for the~~  
4 ~~previous tax year.~~ **after the original due date of the prior tax year**  
5 **return, including any extension.**

6           (iii) The member's share of the tax allocated to the reporting  
7 flow-through entity under subparagraphs (i) and (ii) by other flow-  
8 through entities **paid on a timely filed return for the tax year,**  
9 **including any extension,** with tax years ending on or within the  
10 reporting flow-through entity's tax year.

11           (iv) **The member's share of the tax allocated to the reporting**  
12 **flow-through entity under subparagraphs (i) and (ii) by other flow-**  
13 **through entities paid after the original due date of the prior tax**  
14 **year return of that flow-through entity, including any extension.**

15           (e) The member's share of the tax allocated under subdivision  
16 (d) must be determined based on the member's share of the income or  
17 gain generating the tax imposed under this part and included in the  
18 member's share of business income. If a member is allocated  
19 different portions of separately reported categories of income and  
20 gain, then the allocated share of tax must be based on the tax  
21 imposed under this part on each separate category of income or  
22 gain.

23           (2) An estate or trust that is either a member of a flow-  
24 through entity that elects to file a return and pay the tax imposed  
25 under this part or a direct or indirect member of another flow-  
26 through entity that elects to file a return and pay the tax imposed  
27 under this part shall on or before the due date of the return  
28 required under part 1 report to its beneficiaries their allocable  
29 share of the tax imposed under this part and reported to the estate

1 or trust under ~~section 839(1)(d)~~ **subsection (1)(d)** in the same tax  
2 year. The allocable share is determined by multiplying the total  
3 amount of tax imposed under this part and reported to the estate or  
4 trust under ~~section 839(1)(d)~~ **subsection (1)(d)** in the tax year by  
5 a percentage equal to a fraction, the numerator of which is the  
6 flow-through entity business income tax base that is distributed to  
7 the beneficiaries and the denominator of which is the total flow-  
8 through entity business income tax base that is included in  
9 distributable net income.