SUBSTITUTE FOR

HOUSE BILL NO. 5022

A bill to amend 1967 PA 281, entitled

"Income tax act of 1967,"

by amending sections 254, 675, 813, 831, and 839 (MCL 206.254, 206.675, 206.813, 206.831, and 206.839), as added by 2021 PA 135.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 254. (1) Except as otherwise provided under this section, for tax years beginning on and after January 1, 2021, a taxpayer who is either a member of a flow-through entity that elects to file a return and pay the tax imposed under part 4 or a direct or indirect member of another flow-through entity that elects to file a return and pay the tax imposed under part 4 may claim a credit against the tax imposed under this part in an amount equal to the member's allocated share of the tax as reported to the member by the flow-through entity pursuant to section 839(1)(d) for the tax year ending on or within the taxpayer's same tax year. A nonresident estate or trust may claim a credit against the tax imposed under this part in an amount equal to the nonresident estate's or trust's allocated share of the tax as reported to the nonresident estate or trust pursuant to section 839(1)(d) for the tax year ending on or within the taxpayer's same tax year multiplied by a percentage equal to a fraction, the numerator of which is 100 minus the rate imposed under section 51, and the denominator of which is 100.

(2) For a taxpayer that is an estate or trust, the amount of the credit allowed under this section shall be determined by multiplying the amount calculated under subsection (1) by a percentage equal to a fraction, the numerator of which is the flow-through entity business income tax base that is retained by the estate or trust and the denominator of which is the total flow-through entity business income tax base that is included in distributable net income.

(3) For a taxpayer who is a beneficiary of an estate or trust that is either a member of a flow-through entity that elects to file a return and pay the tax imposed under part 4 or a direct or indirect member of another flow-through entity that elects to file a return and pay the tax imposed under part 4, the amount of the credit allowed under this section is equal to the allocable share of the tax imposed under part 4 for the year ending on or within the taxpayer's same tax year as reported to the beneficiary in accordance with section 839(2).

(4) If the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that portion of the

credit that exceeds the tax liability shall be refunded.

(5) For tax years ending in 2021 only, if the taxpayer claims a credit under this section and the annual return filed under this part on which the credit under this section is claimed results in a refund, any portion of that refund that is attributable to the credit claimed under this section is not subject to added interest under section 30(3), (4), and (5) of 1941 PA 122, MCL 205.30.

(6) The department may require reasonable proof from the taxpayer related to the allocated share of the tax claimed for a credit under this section, the direct or indirect flow-through entities required to report under section 839(1)(d), or any other information required by the department for the administration of this section.

Sec. 675. (1) Except as otherwise provided under this section, for tax years beginning on and after January 1, 2021, a taxpayer who is either a member of a flow-through entity that elects to file a return and pay the tax imposed under part 4 or a direct or indirect member of another flow-through entity that elects to file a return and pay the tax imposed under part 4 may claim a credit against the tax imposed under this part in an amount equal to the member's allocated share of the tax as reported to the member by the flow-through entity pursuant to section 839(1)(d) for the tax year ending on or within the taxpayer's same tax year.

(2) If the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that portion of the credit that exceeds the tax liability shall be refunded.

(3) For tax years ending in 2021 only, if the taxpayer claims a credit under this section and the annual return filed under this part on which the credit under this section is claimed results in a

refund, any portion of that refund that is attributable to the credit claimed under this section is not subject to added interest under section 30(3) of 1941 PA 122, MCL 205.30.

(4) The department may require reasonable proof from the taxpayer related to the allocated share of the tax claimed for a credit under this section, the direct or indirect flow-through entities required to report under section 839(1)(d), or any other information required by the department for the administration of this section.

Sec. 813. For tax years beginning on and after January 1, 2021, a flow-through entity may, in a form and manner as prescribed by the department, elect to file a return and pay the tax imposed by this part. Except as otherwise provided under this section, an election made under this section is an irrevocable election that shall continue for the next 2 subsequent tax years and the taxpayer shall continue to file a return and pay the tax imposed under this part as provided in section 833. ~~A~~ **For tax years beginning before January 1, 2024, a** flow-through entity that elects to pay the tax imposed under this part shall file its election with the department on or before the fifteenth day of the third month of that tax year. However, an election made for any tax year beginning in 2021 must be made before ~~the fifteenth day of the fourth calendar month after the effective date of the amendatory act that added this section.~~ **April 15, 2022. For tax years beginning on and after January 1, 2024, a flow-through entity that elects to pay the tax imposed under this part shall file its election with the department on or before the last day of the ninth month after the end of the tax year.** A separate election must be made after the expiration of the irrevocable period described in this section to continue to pay the tax imposed by this part. If, in accordance with section 847, the tax is not levied and imposed during any tax year, for any subsequent tax year that the tax is levied and imposed under this part, regardless of whether the taxpayer had previously made an election to pay under this section, the taxpayer is required to make a separate election to pay under this section. **If a taxpayer serves written notice upon the department within 60 days of the issuance of a denial of an election made under this section, the taxpayer is entitled to an informal conference on the question in the same manner and under the same procedures provided for under section 21 of 1941 PA 122, MCL 205.21.**

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

(2) The interest and penalty provided by this part shall not be assessed for the 2022 tax year and ~~each subsequent~~ **2023** tax year, if the preceding year's tax liability under this part was $20,000.00 or less and if the taxpayer submitted 4 equal installments the sum of which equals the immediately preceding tax year's tax liability. **For tax years beginning on and after January 1, 2024, both of the following apply:**

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

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

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

(b) The interest and penalty provided by this part shall not

be assessed for any quarterly estimated payment due prior to the taxpayer making the election to pay the tax due under this part for that tax year, unless the department determines that the deficiency is due to the taxpayer's intentional disregard of the law.

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

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

(5) If the department considers it necessary to insure payment of the tax or to provide a more efficient administration of the tax, the department may require filing of the returns and payment of the tax for other than quarterly or annual periods.

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

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

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

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

(d) Each of the following:

(*i*) ~~The~~ **For tax years that begin before January 1, 2024, the** member's share of the tax imposed under this part on the taxpayer for the tax year and paid by the fifteenth day of the third month after the end of the tax year. **For tax years that begin on and after January 1, 2024, the member's share of the tax imposed under this part on the taxpayer for the tax year and paid on or before the date for the filing of the annual return under section 833 for the tax year, including any extension.**

(*ii*) The member's share of the tax imposed under this part on the taxpayer for any prior tax year and paid ~~within the tax year excluding any amount reported under subparagraph (*i*) for the previous tax year.~~**within the tax year excluding any amount reported under subparagraph (*i*) for the previous tax year.**

(*iii*) The member's share of the tax allocated to the reporting flow-through entity under subparagraphs (*i*) and (*ii*) by other flow-through entities with tax years ending on or within the reporting flow-through entity's tax year.

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

(f) Any additional information determined by the department to be necessary for the filing of a direct or indirect member's tax return under this act.

(2) An estate or trust that is either a member of a flow-through entity that elects to file a return and pay the tax imposed under this part or a direct or indirect member of another flow-through entity that elects to file a return and pay the tax imposed under this part shall on or before the due date of the return required under part 1 report to its beneficiaries their allocable share of the tax imposed under this part and reported to the estate or trust under ~~section 839(1)(d)~~ **subsection (1)(d)** in the same tax year. The allocable share is determined by multiplying the total amount of tax imposed under this part and reported to the estate or trust under ~~section 839(1)(d)~~ **subsection (1)(d)** in the tax year by a percentage equal to a fraction, the numerator of which is the flow-through entity business income tax base that is distributed to the beneficiaries and the denominator of which is the total flow-through entity business income tax base that is included in distributable net income.