

INCOME TAX ACT OF 1967 (EXCERPT)

Act 281 of 1967

CHAPTER 21

206.811 Nexus; "actively solicits", "gross receipts", and "physical presence" defined.

Sec. 811. (1) Except as otherwise provided in this part, a taxpayer has substantial nexus in this state and is subject to the tax imposed under this part if the taxpayer elects to pay the tax pursuant to section 813 and if the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year, actively solicits sales in this state and has gross receipts sourced to this state, or is a member or has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through 1 or more other flow-through entities, that has substantial nexus in this state.

(2) As used in this section:

(a) "Actively solicits" means either of the following:

(i) Speech, conduct, or activity that is purposefully directed at or intended to reach persons within this state and that explicitly or implicitly invites an order for a purchase or sale.

(ii) Speech, conduct, or activity that is purposefully directed at or intended to reach persons within this state that neither explicitly nor implicitly invites an order for a purchase or sale, but is entirely ancillary to requests for an order for a purchase or sale.

(b) "Gross receipts" means that term as defined under section 607.

(c) "Physical presence" means any activity conducted by the taxpayer or on behalf of the taxpayer by the taxpayer's employee, agent, or independent contractor acting in a representative capacity. Physical presence does not include the activities of professionals providing services in a professional capacity or other service providers if the activity is not significantly associated with the taxpayer's ability to establish and maintain a market in this state.

History: Add. 2021, Act 135, Imd. Eff. Dec. 21, 2021.

Compiler's note: Enacting section 1 of Act 135 of 2021 provides:

"Enacting section 1. This amendatory act is retroactive and intended to apply retroactively effective for tax years beginning on and after January 1, 2021."

206.813 Election to pay flow-through entity tax; irrevocable; timing.

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. 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 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.

History: Add. 2021, Act 135, Imd. Eff. Dec. 21, 2021;—Am. 2024, Act 216, Eff. Apr. 2, 2025.

Compiler's note: Enacting section 1 of Act 135 of 2021 provides:

"Enacting section 1. This amendatory act is retroactive and intended to apply retroactively effective for tax years beginning on and after January 1, 2021."

206.815 Flow-through entity tax; levy and imposition; base; adjustments; computation of tax; disclosure to members.

Sec. 815. (1) Subject to section 847, beginning January 1, 2021 and each tax year after 2021, there is levied and imposed a flow-through entity tax on every taxpayer with business activity in this state unless prohibited by 15 USC 381 to 384. Except as otherwise provided under subsection (5), the flow-through entity tax is

imposed on the positive business income tax base, after allocation or apportionment to this state, at the same rate levied and imposed under section 51 for that same tax year. A negative business income tax base of a flow-through entity, after allocation or apportionment to this state, is includible in the business income tax base of each member of the flow-through entity and is not available as an offset to the allocated or apportioned business income tax base of the flow-through entity in any other tax year for which an election is made under section 813.

(2) The business income tax base means a taxpayer's business income subject to the following adjustments, before allocation or apportionment, and the adjustment in subsection (4) after allocation or apportionment:

(a) Add interest income and dividends derived from obligations or securities of states other than this state, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

(b) Add losses on the sale or exchange of obligations of the United States government, the income of which this state is prohibited from subjecting to a net income tax, to the extent that the loss has been deducted in arriving at federal taxable income.

(c) Deduct, to the extent included in federal taxable income, income derived from obligations, or the sale or exchange of obligations, of the United States government that this state is prohibited by law from subjecting to a net income tax, reduced by any interest on indebtedness incurred in carrying the obligations and by any expenses incurred in the production of that income to the extent that the expenses, including amortizable bond premiums, were deducted in arriving at federal taxable income.

(d) Add charitable contributions to the extent deducted in arriving at federal taxable income.

(e) Add all taxes on or measured by net income including the tax imposed under this part to the extent that the taxes were deducted in arriving at federal taxable income.

(f) Deduct guaranteed payments for services rendered by a member who is an individual to the extent that those guaranteed payments were included in federal taxable income.

(g) Deduct, to the extent included in federal taxable income, all of the following:

(i) The amount of a refund received in the tax year based on taxes paid under this part.

(ii) The amount of a refund received in the tax year based on taxes paid under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787.

(h) Deduct business income received as a member of another flow-through entity to the extent that the business income increased federal taxable income.

(i) Eliminate all of the following:

(i) Income from producing oil and gas to the extent included in federal taxable income.

(ii) Expenses of producing oil and gas to the extent deducted in arriving at federal taxable income.

(iii) Income derived from a mineral to the extent included in federal taxable income of a qualified taxpayer.

(iv) Expenses related to the income deductible under subparagraph (iii) to the extent deducted in arriving at federal taxable income.

(3) For a taxpayer that has a direct, or indirect through 1 or more other flow-through entities, ownership or beneficial interest in a flow-through entity for which an election was made under section 813 and that reported positive business income in a tax year ending on or within the taxpayer's tax year, the adjustments in subsection (2) shall not include the taxpayer's share of the electing flow-through entities adjustments under subsection (2).

(4) For a taxpayer that has a direct, or indirect through 1 or more other flow-through entities, ownership or beneficial interest in a flow-through entity for which an election was not made under section 813, add the taxpayer's share of the non-electing flow-through entity's positive business income as determined under section 817(2).

(5) In computing the tax due under this part, the taxpayer shall pay the tax due only on the business income tax base allocable to those members who are individuals, flow-through entities, estates, or trusts and exclude the business income tax base allocable to those members that are corporations, insurance companies, or financial institutions. The department may require the taxpayer to disclose identifying information for all members of the taxpayer and the allocable share of business income for each member.

(6) As used in this section:

(a) "Mineral" means that term as defined in section 2 of the nonferrous metallic minerals extraction severance tax act, 2012 PA 410, MCL 211.782.

(b) "Oil and gas" means oil and gas that is subject to severance tax under 1929 PA 48, MCL 205.301 to 205.317.

(c) "Qualified taxpayer" means a taxpayer subject to the minerals severance tax levied under the nonferrous metallic minerals extraction severance tax act, 2012 PA 410, MCL 211.781 to 211.791.

History: Add. 2021, Act 135, Imd. Eff. Dec. 21, 2021.

Compiler's note: Enacting section 1 of Act 135 of 2021 provides:

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206.817 Tax base; apportionment; business activity of the flow-through entity; chapter 3.

Sec. 817. (1) Except as otherwise provided in this part, the business income tax base established under this part shall be apportioned in accordance with allocation and apportionment provisions in chapter 3.

(2) For a taxpayer that has a direct, or indirect through 1 or more other flow-through entities, ownership interest or beneficial interest in a flow-through entity, the taxpayer's business income that is directly attributable to the business activity of the flow-through entity shall be apportioned to this state using an apportionment factor determined under chapter 3 based on the business activity of the flow-through entity.

(3) A taxpayer is subject to tax in another state in either of the following circumstances:

(a) The taxpayer is subject to, or would be subject to, if the taxpayer was not a flow-through entity, a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax.

(b) That state has jurisdiction to subject the taxpayer to 1 or more of the taxes listed in subdivision (a) regardless of whether, in fact, that state does or does not subject the taxpayer to that tax.

History: Add. 2021, Act 135, Imd. Eff. Dec. 21, 2021.

Compiler's note: Enacting section 1 of Act 135 of 2021 provides:

"Enacting section 1. This amendatory act is retroactive and intended to apply retroactively effective for tax years beginning on and after January 1, 2021."

206.819 Tax credit for allocated share of tax reported by flow-through entity; prohibition.

Sec. 819. Any taxpayer allocated income as a member of a flow-through entity by the flow-through entity may not claim a credit against the tax imposed by this part for the taxpayer's allocated share of the tax as reported by the other flow-through entity pursuant to section 839(1)(d) for the tax year ending on or within the taxpayer's same tax year.

History: Add. 2021, Act 135, Imd. Eff. Dec. 21, 2021.

Compiler's note: Enacting section 1 of Act 135 of 2021 provides:

"Enacting section 1. This amendatory act is retroactive and intended to apply retroactively effective for tax years beginning on and after January 1, 2021."