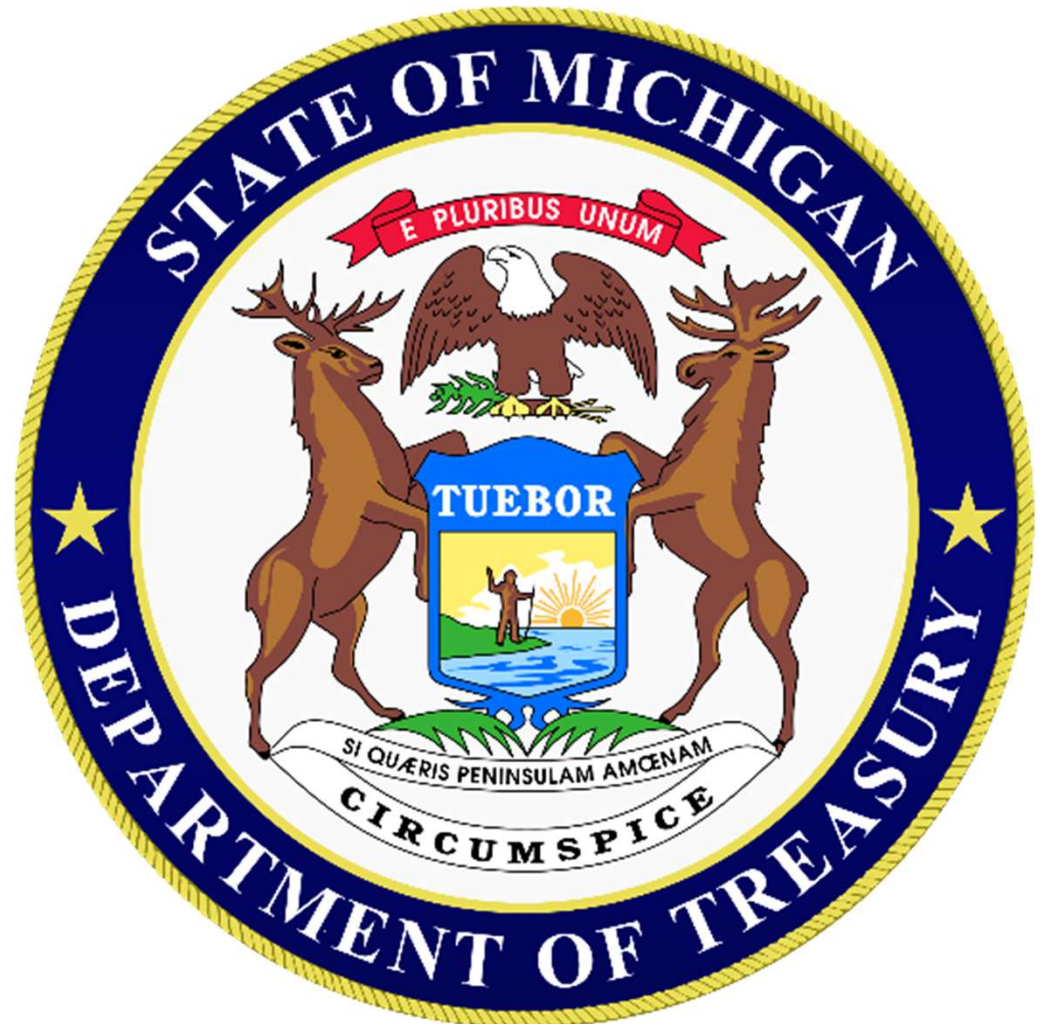


The Big Michigan Tax Update You've Been Waiting For

MI Department of Treasury



Michigan's Flow-Through Entity Tax



SALT Workarounds, generally

FTE taxes are direct response to Tax Cuts and Jobs Act of 2017 implementation of \$10,000 State and Local Deduction Tax (SALT) deduction limitation

Designed to provide business owners benefit of full deductibility of state and local taxes, generally without any revenue consequences on the state

Originally some uncertainty as to whether workaround would be accepted, but ultimately recognized under Notice 2020-75 (November 9, 2020)

The Michigan Flow-Through Entity Tax

2021 PA 135, Signed December 20, 2021

Retroactive to January 1, 2021

Overview –

- Who Can Pay?
- How to Elect to Pay?
- How to Calculate the Tax?
- What must members report?

Who can Pay?

- Electing “Flow-through entities” —
 - S corporation
 - Partnership
 - No publicly traded partnerships
 - Any person subject to tax under CIT
 - No disregarded entities (e.g., SMLLC)

Who can Pay?

- Electing flow-through entities -
 - Irrevocable election
 - Generally, lasts for 3 years
 - Made by submitting payment of any amount through MTO

For most tax years,* elect by
15th day of 3rd mo. *in* the tax year

Tax year	Elect by
Calendar 2022	March 15, 2022

*Special timing due to retroactive implementation for TY 2021 only.



How to Pay the Tax?

All returns and payments must be made through Michigan Treasury Online (MTO)



How to Pay the Tax

- Annual Return (Form 5772)
 - Due last day of third month after the end of the tax year (i.e., March 31 for calendar filer)
 - 6-month extension
- Estimated Tax Payments
 - Required if liability > \$800
 - Due April 15, June 15, September 15, and January 15 (same dates used by individuals)
 - Safe-harbor available

How to Calculate the Tax?

- FTE tax is levied on the positive “business income tax base” (BITB) of each electing flow-through entity
- BITB is defined, but some general features –
 - 4.25% tax rate
 - Adjustments generally mirror those used by individuals
 - No business losses carryforwards or net operating losses
 - Designed to benefit individual members – no tax is paid on any share of the BITB allocable to members who are subject to the CIT

Special Provisions related to the BITB

- Hybrid provisions –
 - Starting point is FTI — with S corps and Partnerships determined to be Corporations for purposes of that computation (US Form 1120)
 - But also includes items of income and expense attributable to business activity that are separately reported to partners
- Tiered entities –
 - Electing FTEs must exclude income from direct and indirect electing FTEs to avoid duplication of tax (FTEs may not claim credits)
 - Nonelecting FTE income is included in BITB, but separately apportioned

FTE Allocation and Apportionment

- Same rules as used for individuals, trusts & estates
- Apportionment: single sales factor (MI sales / Total Sales)
- For Tiered entities – Any BITB included from non-electing FTEs gets apportioned under Chapter 3 using that non-electing FTE's factors



FTE Reporting Requirements

- Both electing and non-electing FTEs are required to report
- Due same day as annual return
- Required Information:
 - Allocation & Apportionment
 - Share of FTE's income taxes deducted in arriving at FTI
 - Share of FTE taxes levied and paid
 - Share of refund received in the tax year of Michigan state or city income tax to extent included in FTI
- Same information must be passed through from lower-tier FTEs, separately.

What must members report?

- **Refundable Credit** - Member will receive credit for MI FTE taxes paid by FTE
 - Timing of credit depends on timeliness of FTE payment:
 - Pay by March 15 (return due 3/31)– credit allowed in member’s same tax year
 - Pay after March 15 (return due 3/31) – credit is allowed in member’s following year
 - No e-file capability for those claiming credits in 2021 only



What must members report?

- **Addition:** share of MI taxes deducted via distributive share
- **Subtraction:** share of MI refund included in income via distributive share



General Example

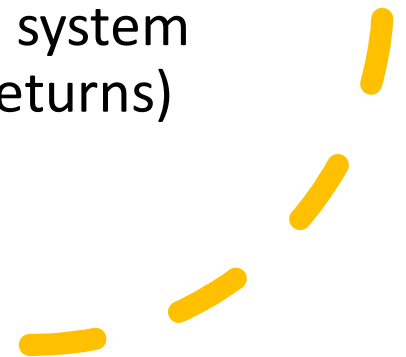
- Partnership elects into MI FTE Tax.
- Reported BITB of \$100
- Partnership pays MI FTE tax of \$4.
- The MI FTE tax is deducted federally
- Individual Member receives a Schedule K-1 showing a distributive share equal to \$96.
- Individual Member is allocated all \$4 in tax.

Individual MI-1040


AGI	96
Add:	
<u>FTE Tax deducted</u>	<u>4</u>
MI Taxable Income	100
Tax (@ 4.25%)	4
<u>FTE Credit</u>	<u>(4)</u>
<u>Tax Owed</u>	<u>0</u>

Update on Michigan Treasury Online (MTO)

- All returns and payments must be made through MTO; no paper returns
- Phased implementation
 - Phase 1 – Barebones payment and return filing functionality
 - Phase 2 – ETA June (allow attachments, other technical fixes)
 - Phase 3 – ETA December (full system functionality; amended FTE returns)



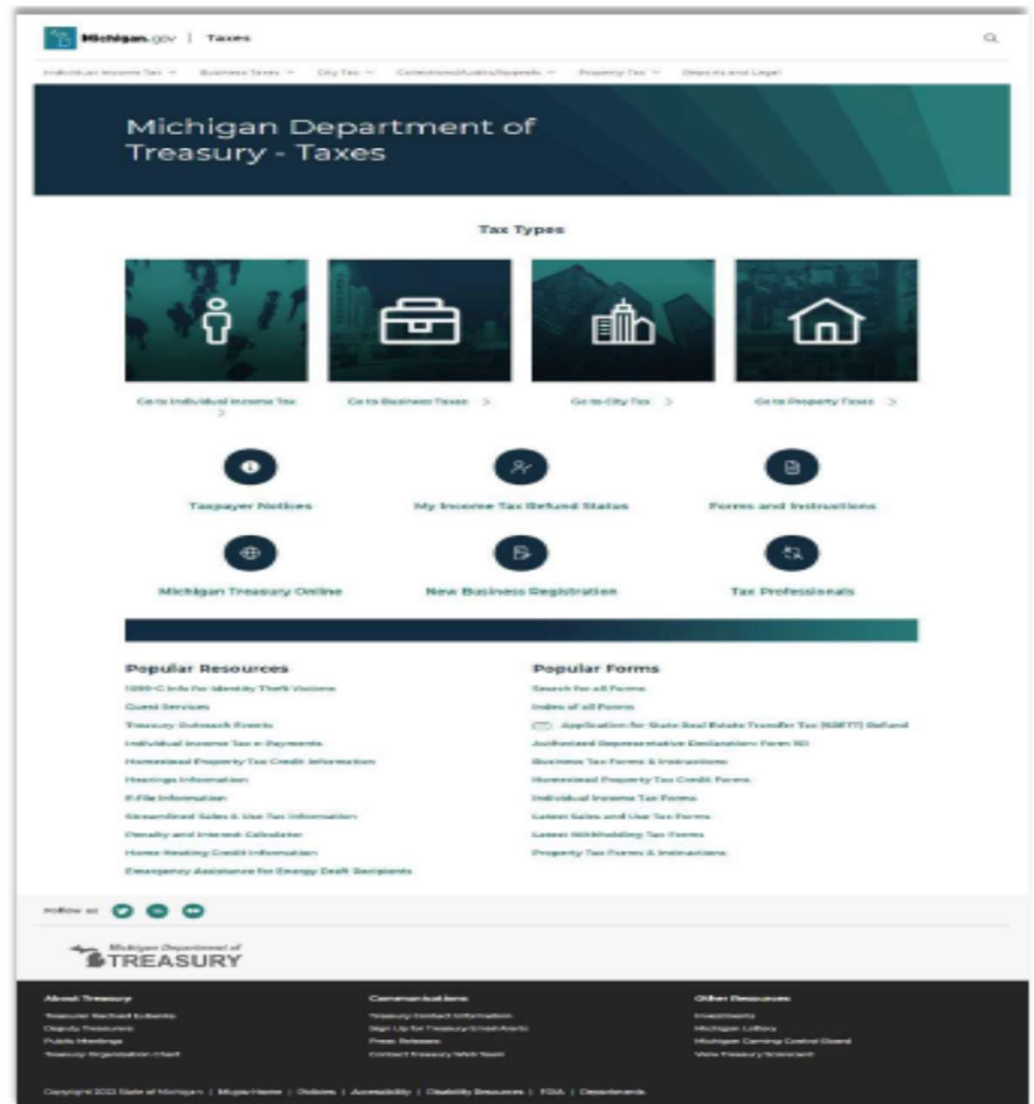
Additional FTE Resources

- [FTE Webpage](#) (FAQs, notices, MTO walkthrough, other updates)
 - January 14, 2022 [Implementation Notice](#)
 - Michigan Treasury Online ([MTO](#))
- 

Treasury's Website Transition



- Launched January 2022
- www.michigan.gov/taxes
- www.Michigan.gov/treasury



MiTreas Modernization



Streamline
customer
portal



Make & view
payment
history



View
Assessments



Submit POA



View letters
from Treasury



Send inquiries
electronically

Revenue Bulletins
Treasury Notices
Tax Newsletters
Tax Policy Updates



Revenue Administrative Bulletins

2021-17: Estimated Payments for
Individuals & Fiduciaries



2021-18: Exemption Claim Procedures
& Formats



2021-19: Treatment of Alimony &
Separate Maintenance Payments



Revenue Administrative Bulletins

2021-21 Nexus Standards for Remote Sellers



2021-22 Marketplace Facilitators & Sellers

2021-23 Treatment of Motor Vehicle Insurance
Premium Refunds

2021-24 Retirement & Pension Benefits Deduction
for a Surviving Spouse

Revenue Administrative Bulletins

2021-25 Homestead Property Tax Credit
Calculation

A light blue downward-pointing arrow is positioned to the right of the first box, pointing towards the second box.

2021-26 Farmland Preservation Tax
Credit Eligibility

A light green downward-pointing arrow is positioned to the right of the second box, pointing towards the third box.

2022-4 Food for Human Consumption

2020
Unemployment
Benefits

Amend MI Tax Return

Exclude up to \$ 10,400

Received in 2020 only

NO retroactive benefits count

Important Publications

Treasury Notices

- 01/13/2022 – Wagering Losses for Casual Gamblers
- 03/14/2022 – Cancellation or Discharge of Student Loans for Disabled Veterans
- 04/06/2022 – MI Flow-Through Entity Tax
- 05/19/2022 First Time Home Buyer Savings Account
- 08/26/2022 – Federal Partnership Audit Adjustment

Important Publications

Tax Policy Newsletter

- 08/2021 – Authority for Tax Preparer
- 11/2021 – Sales & Use Tax
- 02/2022 – Wagering Losses for Casual Gambler
- 02/2022 – First-Time Home Buyers Savings Program
- 08/2022 – POA Form 151

POA – Form 151

Internal Department of Treasury
TST (Rev. 11-21)

Issued under authority of Public Act 122 of 1941.

Reset Form

Authorized Representative Declaration (Power of Attorney)

Detailed instructions on page 2.

NOTE: All information designated as "required" must be supplied for this authorization to be effective. Use Part 2 to revoke previous authorizations in total or in part. To add a new representative Part 3 must be completed along with at least one box from Parts 4 or 5.

PART 1: TAXPAYER OR DEBTOR INFORMATION			
Taxpayer's Name (Required) If a business, include any DBA, trade or assumed name. If filing joint return, include spouse's name.		Filing, SSN, or TIN Number (Required for business taxes)	
Taxpayer or Business Address (Required)		Taxpayer's Social Security Number (Required if no Filing, SSN, or TIN Number listed)	Spouse's Social Security Number
Taxpayer's E-mail Address		Daytime Telephone Number	Fax Number
PART 2: REVOKE PREVIOUS AUTHORIZATION			
To revoke the authority of your current representative, check the applicable box in this section.			
<input type="checkbox"/> 1. I revoke all prior authorizations. I will represent myself.			
<input type="checkbox"/> 2. I revoke prior authorizations in the matter(s) listed here:		Tax Type(s), Debt Type, or Fee	Tax Year(s)/Period(s)
<input type="checkbox"/> 3. I revoke prior authorizations directing Treasury to send copies to my representative for dispute(s) listed here:		Tax Type(s)	Tax Year(s)/Period(s)
PART 3: REPRESENTATIVE APPOINTMENT			
Your representative may be an entity or an individual. If you designate an entity you must also provide an individual as a contact. If no start date is indicated the authorization is effective as of the date this form is signed. If no expiration date is indicated the authorization is effective until revoked.			
Authorized Representative's Name (Required)		Contact Name (Required if an entity is named)	
Authorized Representative's Address (Required)		Telephone Number (Required)	Fax Number
		Authorization Start Date (mm/dd/yyyy)	Authorization Expiration Date (mm/dd/yyyy)
		Authorized Representative's E-mail Address	
PART 4: TYPE OF AUTHORITY			
If you check a box, you authorize your representative to act in that capacity:			
<input type="checkbox"/> 1. Receive and inspect oral or written confidential information (upon request only). (To have your representative receive copies of all future letters and notices involving a tax dispute [other than City Income tax], you must complete Part 5.)		You may restrict authority in boxes 1-4 to a specific matter. (Not required.)	
<input type="checkbox"/> 2. Make oral or written presentation of fact or argument.		Tax Type(s), Debt Type, or Fee	Tax Year(s)/Period(s)
<input type="checkbox"/> 3. Sign returns.			
<input type="checkbox"/> 4. Enter into agreements.			
PART 5: REQUEST COPIES OF LETTERS AND NOTICES REGARDING A TAX DISPUTE (other than City Income Tax)			
<input type="checkbox"/> By checking this box, you are directing Treasury to send a copy of all future notices and letters involving a particular tax dispute to your representative named in Part 3 under section 6 of the Revenue Act (MCL 205.6). Enter the tax (income tax, sales tax, use tax, etc.) and year(s) or period(s) in the fields at right. (Tax and year(s) or period(s) are both required if this box is checked.)		Tax Type	Tax Year/Period
		Tax Type	Tax Year/Period
		Tax Type	Tax Year/Period
PART 6: TAXPAYER OR DEBTOR AUTHORIZATION			
By signing this form, I authorize Treasury to communicate with my representative consistent with the authority granted.			
Signature (Required)	Print Name (Required)	Title (Required if a business)	Date (Required)
Spouse's Signature	Print Name	Title	Date (Required if spouse signs)
TREASURY USE ONLY			
<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected		Division Name	Reversal Status

Form 4095

Reset Form

Michigan Department of Treasury
4095 (Rev. 01-21)

Request and Consent for Disclosure of Michigan Tax Return Information

Issued under authority of Public Act 122 of 1981, MCL 205.261

The Revenue Act, Public Act 122 of 1981, MCL 205.26(1)(f), makes all information acquired in administering taxes confidential. The Michigan Department of Treasury recoups cost for preparing copies of tax returns or tax return information requested by authorized third parties. Taxpayers may receive copies of their personal tax returns at no charge. The current fee schedule is listed below (see Part 3).

PART 1: TAXPAYER INFORMATION				
Enter the name of the individual or business, address and account number for which the tax information is being requested:				
Taxpayer Last Name	First Name	MI	Social Security Number or PTIN	Telephone Number
Secondary Taxpayer Last Name	First Name	MI	Social Security Number or PTIN	Telephone Number
Address (Street)		City	State	ZIP Code
Tax Type				
<input type="checkbox"/> Income Tax <input type="checkbox"/> SBT <input type="checkbox"/> MST <input type="checkbox"/> CIT <input type="checkbox"/> SUW <input type="checkbox"/> Other _____				
Tax Year(s)		Tax Period		
PART 2: AUTHORIZATION				
I authorize the State of Michigan, Department of Treasury to furnish tax returns and/or tax return information specified in Part 1 to the appointee listed below. I understand that once the tax returns are furnished, the appointee is solely responsible for the privacy and security of the tax return information. This authorization expires in six months and is not a substitute for a formal Form 151, Authorized Representative Declaration.				
Appointee Name		E-mail Address		Telephone Number
Address (Street)		City	State	ZIP Code
Signature of Taxpayer OR Legal Representative				Date
Signature of Taxpayer OR Legal Representative				Date
PART 3: FEE SCHEDULE				
Authorized third parties must pay the fee described here. Payment for tax return information must accompany the request. Make checks payable to the State of Michigan and write index code # 10182 on the check. * Large requests will be assessed differently.				
First Year	\$ 5.00			\$5.00
Additional Year(s)	\$ 3.00 X _____			
FEE TOTAL				

Please allow 60 days for processing your request.

The Disclosure Office will only provide records once. Records will not be resent without submitting a new 4095 form and fee.

Submit your request with payment to the following address:

Michigan Department of Treasury
Office of Privacy and Security, Disclosure Unit
430 W. Allegan Street
Lansing, MI 48922
Telephone: 517-636-4239

Treasury Use Only	
1. <input type="checkbox"/> The attached information is furnished for tax year(s) _____	
2. <input type="checkbox"/> No record of filing a return for tax year(s) _____	
3. <input type="checkbox"/> Other _____	
Disclosure Office Approval	Date Completed

WHAT AUTHORITY DOES CHECKING THE BOX PROVIDE THE TAX PREPARER

Each income tax season Treasury is asked what authority is a taxpayer giving their tax preparer by checking the box on their individual income tax return. At the bottom of page 2 of the MI-1040 under "Taxpayer Certification" there is a statement that says "By checking this box, I authorize Treasury to discuss my return with my preparer." For some taxpayers, it seems to be a fairly, straight forward statement, yet for others, it generates questions and even strong disagreements.

Treasury's interpretation of what authority checking the box provides is grounded in section 8 of the Revenue Act, MCL 205.8, and Michigan Administrative Rule R 205.1006d. Rule 205.1006d details what information is and is not authorized by checking the box on a return.

Checking the box authorizes the tax preparer to:

- Provide Treasury with information missing from the return.
- Contact Treasury to obtain information about the status of the return, refund or payments related to the return.
- Request copies of correspondence related to matters concerning the return, such as math errors, return preparation and adjustments.
- Respond to correspondence related to matters concerning the return.

Checking the box **does not** authorize Treasury to:

- Discuss any other tax return with the tax preparer.
- Provide the tax preparer with information regarding an audit, assessment, or collection activities on the taxpayer's account.

Checking the box **does not** authorize the tax preparer to:

- Take any action on behalf of the taxpayer.
- Request an informal conference.
- Appeal any assessment or order of the determination.
- Receive the taxpayer's refund check.
- Represent the taxpayer before Treasury.

A taxpayer wishing to give their tax preparer additional authorization beyond the return as submitted must complete Michigan Department of Treasury Form 151, Authorized Representative Declaration (Power of Attorney) or other written authorization designating the tax preparer as its representative. The *Authorized Representative Declaration (Power of Attorney) (Form 151)*, may be found on Treasury's website www.michigan.gov/taxes.

36. Subtract line 35 from line 34.		REFUND 36	
DIRECT DEPOSIT Deposit your refund directly to your financial institution! See instructions and complete a, b, and c.		a. Routing Transit Number	b. Account Number
Deceased Taxpayer. If filer and/or spouse died after December 31, 2020, enter dates below: ENTER DATE OF DEATH ONLY. Example: 04-15-2020 (MM-DD-YYYY)		Preparer Certification (this return is based on all information provided by the taxpayer and preparer's PPSR, PERM or E)	
Filer	---	Spouse	---
Taxpayer Certification. I declare under penalty of perjury that the information in this return and attachments is true and complete to the best of my knowledge.		Preparer's Name (print or type)	
Filer's Signature		Date	
Spouse's Signature		Date	
<input type="checkbox"/> By checking this box, I authorize Treasury to discuss my return with my preparer.		Preparer's Signature	
		Preparer's Business Name	
Refund credit, or zero returns. Mail your return to:		Michigan Department of T	
Pay amount on line 33 (see instructions). Mail your check and return to:		Michigan Department of T	

NEW INCOME TAX DEDUCTION FOR WAGERING LOSSES FOR CASUAL GAMBLERS

At the close of 2021, PA 168 was signed into law creating a new individual income tax deduction for wagering losses sustained by casual gamblers, for tax years beginning in 2021. Since Michigan taxable income begins with federal adjusted gross income (AGI), it includes the wagering gains of both professional and casual gamblers. However, prior to PA 168 due to the differing manner in which wagering losses are reported at the federal level for professional and casual gamblers, only the professional gambler's losses were captured in Michigan taxable income. Since casual gamblers report their wagering losses as an itemized deduction on Schedule A at the federal level, which is not a component of AGI, the casual gambler's losses were not captured on the Michigan return.

PA 168 amended the Michigan Income Tax Act to allow a separate deduction for casual gamblers who elect to itemize deductions federally rather than take the standard deduction. The deduction equals the wagering losses a taxpayer claims as an itemized deduction on their federal income tax return for the same tax year. As before, a gambler cannot reduce taxable gambling winnings below zero. For nonresidents, only wagering losses attributable to wagering transactions placed at or through a casino or licensed race meeting located in Michigan may be deducted and only to the extent of the gains on those transactions allocated to Michigan.

PA 168 did not create a separate deduction for purposes of the City Income Tax Act and does not affect the tax calculation of city income tax liability.

Michigan Tax Text



Flow-Through Entity Distributions

P 78

Taxpayer's Distributive Share

Allocation & Apportionment

Form MI 1040-H Schedule of Apportionment

Portfolio Income

Business, Rental & Royalty Worksheet

P 79

Type & Location of Business Activity

Description of income NOT taxable in Michigan

NOT a required attachments

Identify location of Michigan & Non-Michigan
business/rental activity

Composite IIT Returns

P 79

Form 807 – Composite Individual income Tax Return

Estimated payments > \$ 500

MI-1040ES – only for participants

NO Subtraction on Composite return

Credit on MI-1040 for share of tax paid

Flow-Through Entity Tax

P 80

```
graph TD; A[Entity Level Election] --> B[4.25% tax]; B --> C[Tax Base = Michigan only]; C --> D[www.Michigan.gov/taxes/business-taxes/flowthrough-entity-tax];
```

Entity Level Election

4.25% tax

Tax Base = Michigan only

www.Michigan.gov/taxes/business-taxes/flowthrough-entity-tax

Apportionment of Income from Flow-Through

P 80-81

U.S. Supreme Court – multistate business apportionment

Unitary Business Principle

Factors:

- Functional
- Integration
- Economies of Scale
- Centralized management

Method of Apportionment

P 80-81

Single Entity

Combined
Multiple
Entity

Net
Operating
Loss (NOL)
P 82-83

I.R.C. §172 must apply

MI-1045 Net
Operating Loss
Schedule

Net Operating Loss (NOL) P 82-83

The relevant rules regarding Michigan NOLs can be summarized in the following table:

	Group 1 NOL	Group 2 CARES NOL	Group 2 TCJA NOL
Created from losses incurred in tax year	Pre-2018	2018, 2019, 2020	2021 and beyond
Carryback rule	two-year carryback	five-year carryback	No carryback (exception: two-year carryback for farming losses)
Carryforward rule	20 years	Unlimited	Unlimited
Deduction to % of Taxable Income	100%	100% if used prior to 2021; 80% if used after 2020	80% of taxable income
Appropriate Michigan form to file for carryback	MI-1045	5603-CARES Act	No carryback (exception: farmers use Form 5603 for the carryback of farming losses)

Gambling Income P 83-84

Casual
Gamblers

January 1,
2021

Federal
Itemized
Deductions –
deduct on MI-
1040

Don't Itemize
– unable to
deduct on MI-
1040



Questions?