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Mich. Comp. Laws Sections 206.801 to 206.819

206.801 Meanings of terms; other provisions.

A term used in this part and not defined differently shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes in effect for the tax year as provided in section 805(5) unless a different meaning is clearly required. A reference in this part to the internal revenue code includes other provisions of the laws of the United States relating to federal income taxes.

206.803 Definitions; B to E.

(1) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer, services as a director of a corporation or S corporation, or services as a manager of a limited liability company that has elected to file as a C corporation or S corporation for federal income tax purposes.

(2) "Business income" means federal taxable income and includes payments and items of income and expense that are attributable to business activity of the flow-through entity and separately reported to its members.

(3) "Corporation" means a person that is required or has elected to file as a C corporation as defined under section 1361(a)(2) and section 7701(a)(3) of the internal revenue code.

(4) "Department" means the department of treasury.

(5) "Domicile" means the principal place from which the trade or business of the flow-through entity is directed or managed.

(6) "Employee" means an employee as defined in section 3401(c) of the internal revenue code. A person from whom an employer is required to withhold for federal income tax purposes is prima facie considered an employee.

(7) "Employer" means an employer as defined in section 3401(d) of the internal revenue code. A person required to withhold for federal income tax purposes is prima facie considered an employer.

206.805 Definitions; F to M.

(1) "Federal taxable income" means taxable income as defined in section 63 of the internal revenue code without the deductions described under section 703(a)(2) of the internal revenue code. For the purposes of this part in computing federal taxable income, an S corporation shall be treated as a corporation under section 1361(a)(2) of the internal revenue code and a partnership

shall be treated as an association taxable as a corporation pursuant to an election under 26 CFR 301.7701-3(a).

(2) "Financial institution" means that term as defined in section 651.

(3) "Flow-through entity" means an entity that for the applicable tax year is treated as an S corporation or a partnership under the internal revenue code for federal income tax purposes. Flow-through entity does not include a publicly traded partnership, any entity disregarded under section 845, or any person subject to the tax imposed under chapter 13.

(4) "Insurance company" means that term as defined in section 607.

(5) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 2021 or, at the option of the taxpayer, in effect for the tax year.

(6) "Member", when used in reference to a flow-through entity, means a shareholder of an S corporation or a partner or member in a partnership.

206.807 Definitions; P to S.

(1) "Partnership" means an entity that is required to or has elected to file as a partnership for federal income tax purposes. Partnership includes a limited liability company that is treated as a partnership for federal income tax purposes.

(2) "Person" means an individual, bank, financial institution, insurance company, association, corporation, flow-through entity, receiver, estate, trust, or any other group or combination of groups acting as a unit.

(3) "Publicly traded partnership" means that term as defined under section 7704 of the internal revenue code.

(4) "S corporation" means a United States person electing taxation under sections 1361 to 1379 of the internal revenue code.

(5) "Sale" or "sales" means that term as defined in section 20.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country, or a political subdivision of any of the foregoing.

206.809 Definitions; T to U.

(1) "Tax" means the tax imposed under this part, including interest and penalties under this part, unless the term is given a more limited meaning in the context of this part or a provision of this part.

(2) "Tax year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this part. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this part, a taxpayer's tax year is for the same period as is covered by its federal income tax return. A taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before the end of any month is considered to have a tax year beginning on the first day of the subsequent month.

(3) "Taxpayer" means a flow-through entity that elects pursuant to section 813 to be subject to the tax under this part.

(4) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

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

(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.

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

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 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. 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.

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

(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.

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

(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.

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

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.