



House Bill 5367 (Substitute S-1 as reported by the Committee of the Whole)  
Sponsor: Representative Mark Tisdell  
House Committee: Second Reading  
Senate Committee: Finance

### **CONTENT**

The bill would amend the Income Tax Act to create Part 4, which would do the following:

- Define various terms, including "flow-through entity" and "business income", for the purposes of Part 4.
- Define substantial nexus for the purposes of the flow-through entity tax.
- Beginning January 1, 2021, and each tax year after that, levy and impose a flow-through entity tax equal to the individual income tax on every taxpayer with business activity in the State unless otherwise prohibited by Federal law.
- For tax years beginning on and after January 1, 2021, allow a flow-through entity to elect to file a return and pay the flow-through entity tax.
- Specify that the flow-through entity tax would be imposed on the positive business income tax base, subject to certain allocations adjustments.
- State that the tax base would have to be apportioned in accordance with allocation and apportionment provisions in Chapter 3 of the Act.
- Prohibit a taxpayer allocated income as a member of a flow-through entity by the entity from claiming a credit against the flow-through entity tax for the taxpayer's allocated share of the tax as reported by the other entity.
- Require a taxpayer that reasonably expected liability for the tax year to exceed \$800 to file an estimated return and pay a quarterly estimated tax.
- Require a flow-through entity that elected to pay the flow-through entity tax to either file an annual or final return by the last day of the third month after the end of the taxpayer's tax year.
- Allow the Department of Treasury to extend the date for filing the annual return upon application of the taxpayer and for good cause shown.
- Require a taxpayer or a flow-through entity that did not make the election to file a return to provide certain information to any member to which the provision of information would be required by the Internal Revenue Code (IRC).
- Require certain estates and trusts to report to its beneficiaries their allocable share of the flow-through entity tax.
- Require the Department to administer the flow-through entity tax and allow it to promulgate rules for the maintenance of certain information.
- Specify that the revenue collected under the bill would have to be distributed to the State School Aid Fund and the General Fund.
- Specify that a person that was a disregarded entity for Federal income tax purposes under the IRC would have to be classified as a disregarded entity for the purposes of the bill.

In addition, the bill would amend the Act to allow, for tax years beginning on and after January 1, 2021, a member of a flow-through entity or an indirect member of a flow-through entity

that elected to pay the proposed flow-through entity tax to claim a credit against the individual income tax or Corporate Income Tax.

MCL 206.30 et al.

Legislative Analyst: Christian Schmidt

### **FISCAL IMPACT**

The bill would have no impact on State revenue. The bill would create a special pass-through entity tax and allow a credit under the individual income tax for taxes paid under the new pass-through entity tax. Members of pass-through entities currently are taxed under the individual income tax; the proposed tax would be levied at the same rate and distributed in the same manner as the individual income tax. The primary difference from current law is that the tax would be paid at the business-entity level rather than the level of individual members of the business entity. As a result, individual members would not be affected by the Federal limitation on the deduction (currently \$10,000) of State and local individual income taxes and could receive a greater deduction on their Federal taxes.

Date Completed: 12-14-21

Fiscal Analyst: David Zin