

Income/Franchise:

Michigan Department of Treasury Explains Retroactive Implementation of New Passthrough Entity Tax

Notice Regarding the Implementation of the Michigan Flow-Through Entity Tax, Mich. Dept. of Treas. (1/14/22); *Notice: Flow-through Entity Tax Quarterly Estimated Tax Payments for Tax Years Beginning in 2021 Not Subject to Penalty or Interest*, Mich. Dept. of Treas. (1/18/22). Following its earlier guidance on the same [see *Notice: Instructions for Electing Into & Paying the Flow-Through Entity Tax*, Mich. Dept. of Treas. (12/22/21) and *State Tax Matters*, Issue 2022-1, for more details on this earlier guidance], the Michigan Department of Treasury (Department) issued additional instructions and guidance pursuant to legislation enacted in 2021 [see H.B. 5376 (Public Act 135 (2021)) and previously issued Multistate Tax Alert for more details on this new law] that provides a passthrough entity tax (PET) on certain electing flow-through entities with business activity in Michigan. Such passthrough entities may make a three-year binding election to file a return and pay the new PET; this election applies retroactively to tax years beginning on or after January 1, 2021. The Department's updated guidance provides an overview of these new provisions and "includes special instructions related to the retroactive implementation of that tax."

URL: https://www.michigan.gov/documents/treasury/19773_FTE_tax_notice_745849_7.pdf

URL: <https://www.michigan.gov/taxes/0,4676,7-238--575715--,00.html>

URL: <https://www.michigan.gov/taxes/0,4676,7-238-43976-574512--,00.html>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_10.html

URL: <http://legislature.mi.gov/doc.aspx?2021-HB-5376>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-michigan-enacts-flow-through-entity-tax-election.pdf>

For flow-through entities with calendar or fiscal tax years beginning in 2021, the Department explains that the PET election may be made through April 15, 2022, and that flow-through entities can generally make the election for tax year 2021 by specifying a payment for the 2021 tax year that includes the combined amount of any unpaid quarterly estimated payments due for tax year 2021. According to the Department, any flow-through entity electing after the due date of the PET annual return (*i.e.*, March 31, 2022, for calendar year filers) "should immediately file the return and include payment of the tax due." For entities electing after March 31, 2022, "interest accruing from the initial due date of the return will apply; however, penalty will not be levied for the late filing of the return or payment of the tax," and "any election made after April 15, 2022, will not be accepted as a valid election for that tax year."

Furthermore, the Department provides that a calendar year flow-through entity that wants to make an election for three tax years beginning with the 2022 tax year "must do so no later than March 15, 2022," and for any tax year beginning in 2022, elections must be made by submitting a payment through "Michigan Treasury Online" (MTO). Such payment must be designated as applicable to the 2022 tax year. Please contact us with any questions.

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