

**A Primer on Flow-Through Entities in Michigan**

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**Executive Summary**

- When a business is created, the firm has a choice as to how it will organize legally. The choices are sole proprietorship, partnership, corporation and limited liability company (LLC). These choices affect how the business will pay taxes and handle legal liabilities. The number of LLCs, both nationally and in Michigan, has consistently increased since their inception in the 1970s.
- The Tax Cut and Jobs Act (TCJA) limited the amount of state and local taxes that flow-through entities, such as partnerships and LLCs, could deduct on their Federal returns. Michigan, like many states, adopted a flow-through entity tax in response to the TCJA, so that affected businesses would be able to deduct a greater share of their state and local taxes from their Federal returns.
- While flow-through entity taxes are structured to be revenue-neutral for the states that adopt them, the timing of when Michigan's Flow-Through Entity Tax (FTE Tax) took effect created a number of side effects. These side effects were not revenue neutral with respect to individual fiscal years and exhibited consequences that extended beyond flow-through entities, including the calculation of the Individual Income Tax rate.

**Flow-Through Entity Overview**

Generally, there are four primary types of business organizational forms: sole proprietorship, partnership, corporation, and LLC. Each form has distinct characteristics, including how they pay taxes and handle legal liabilities. A sole proprietorship is owned and operated by one individual with no legal separation between business and owner, and the owner is personally responsible for all aspects of the business, including its debts and liabilities. From a tax perspective, any income and expenses of the business are reported on the owner's personal tax return and the income and expenses are taxed at the owner's individual tax rate.

Under a partnership, two or more individuals conduct business jointly and the shared profits and losses are part of each partner's individual tax return. In this business organizational form, partners are still personally liable for business debts and obligation as there is no legal separation between the business and the partners.

A corporation is a form of business organization in which a group acts as one entity. The legal entity is separate from the corporation's owners or shareholders. The shareholders are not personally liable for the corporation's debts or legal liabilities. Corporations may elect a special tax status with the Federal government. Corporations that do not elect the special tax status are referred to as C-corporations. Any income received by a C-corporation is subject to the corporate income tax (CIT) while any shareholders or owners are taxed only if the corporation pays dividends on stock issued by the corporation—and then only on those dividends, rather than all income received by the corporation. Dividends to shareholders who are individuals are taxed under the individual income tax.

However, corporations that do elect the special tax status do not file returns under the CIT and instead, unless they choose otherwise, may "pass-through" the corporation's income to individual



owners or shareholders and pay taxes under the individual income tax. Corporations that make this special tax designation are referred to as S-corporations.<sup>i</sup>

Under an LLC, owners are granted a combination of the limited liability benefits of a corporation and the taxation benefits of a partnership. An owner's personal assets are shielded from the debts and liabilities of the business while being eligible for corporate or partnership tax rates.<sup>1</sup>

Specifically, LLCs or S-corporations<sup>ii</sup> may be subject to or elect into flow-through taxation in which a business's income, losses, deductions, and credits "flow-through" or "pass through" to the owners or shareholders who are responsible for reporting their shares of the business income on their individual tax returns. At both the state and Federal level, this income is subject to the individual income tax rate and any deductions, credits, and limits provided under statute.

In Michigan, a flow-through entity specifically means an entity for the applicable tax year that is treated as an S-corporation, partnership, limited partnership, limited liability partnership, or LLC.<sup>2</sup> A flow-through entity does not include a publicly traded partnership, any entity disregarded for Federal tax purposes, or any person subject to the tax imposed in Chapter 13 of the Income Tax Act. (Chapter 13 imposes the Franchise Tax, levied on every financial institution which has substantial nexus.)<sup>iii</sup>

### **Corporate Taxes v. Flow-Through Taxes**

The Michigan CIT took effect January 1, 2012. Before the CIT, flow-through entities were not subject to the CIT but were instead taxed through the owners or shareholders on their individual tax returns. After the enactment of PA 135 of 2021 (described later), members of flow-through entities were given an option to pay a separate flow-through tax and then claim a credit under the IIT equal to the IIT that member would pay on the flow-through income taxed as personal income.

Generally, corporate income taxes are levied on the profits earned by corporations as separate legal entities and the corporations are considered separate taxpayers apart from an owner or shareholder of the corporation. The Michigan CIT imposes a 6% income tax on C-corporations and taxpayers classified as corporations for Federal tax purposes. The CIT has one credit, the small business

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<sup>i</sup> An S corporation must meet the following requirements:

- Be a domestic corporation.
- Have only allowable shareholders that are individuals, certain trusts, or estates. Allowable shareholders cannot be other partnerships, corporations, or nonresident alien shareholders.
- Have no more than 100 shareholders.
- Have only one class of stock.
- Not be an ineligible corporation such as a financial institution or insurance company.

<sup>ii</sup> Limited liability companies and S-corporations are legally distinct organizational forms yet have many similarities. Both offer limited liability protection, may "pass-through" income unless they elect otherwise, and are subject to a host of ongoing compliance requirements from the state under whose statutes the firm is organized. However, the two forms face different restrictions on ownership, parent/subsidiary relationships, and the issuance of stock. From a management perspective, S-corporations have directors and officers; an LLC managed by the owners will look more like a partnership while if the LLC hires managers to operate the firm, the LLC will more closely resemble a corporation. The two forms also differ in the number and types of internal formalities required under the law (such as bylaws/operating agreement, annual meetings, documenting decisions, etc.).

<sup>iii</sup> Under the Income Tax Act, substantial nexus is generally met if the taxpayer has a physical presence in Michigan for a period of more than one day during the tax year, if the taxpayer actively solicits sales in Michigan and has gross receipts of \$350,000 or more sourced to Michigan, or if the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through one or more other flow-through entities, that has substantial nexus in the State.



alternative credit,<sup>3</sup> which was retained from the Michigan Business Tax (Michigan's primary business tax before the CIT) and offers an alternative tax rate of 1.8% of adjusted business income.<sup>4</sup>

Under Michigan law, some CIT taxpayers are not required to file a CIT return nor make payments under the CIT. A CIT taxpayer with total apportioned or allocated gross receipts of less than \$350,000 is not required to file a return nor to make payments under the CIT.<sup>iv</sup> Similarly, a CIT taxpayer with an annual liability equal to or less than \$100 is not required to file a CIT return or make a payment for the CIT.<sup>5</sup> These exclusions do not apply to financial institutions or insurance companies.

### **The Tax Cut and Jobs Act (TCJA) and State and Local Tax (SALT) Limitations**

The TCJA is a comprehensive tax reform law enacted in 2017. The TCJA changed the Federal tax code in numerous ways. On the individual income tax side, these changes included tax rate reductions, an increase in the standard deduction, and limits on certain itemized deductions.

Under the TCJA, beginning in the 2018 tax year and through the 2025 tax year, the SALT deduction is capped at \$10,000 for individuals and married taxpayers filing jointly. Additionally, the cap applies to the combined total of state and local income taxes and property taxes. Before this legislation, taxpayers generally were able to deduct the full amount they paid in state and local income taxes and property taxes on their Federal returns. The cap applies to all taxpayers who file under the Federal individual income tax, regardless of whether the taxpayer is a member of a flow-through entity. As a result, the TCJA effectively limited the amount of state and local taxes that flow-through entities could deduct on their Federal returns.

Following the SALT deduction limitations, certain jurisdictions enacted, or considered enacting, legislation that negated the \$10,000 limit for flow-through entities. Although there were initial concerns about whether the Internal Revenue Service (IRS) would regulate state workarounds, in November 2020, the IRS issued, "Forthcoming Regulations Regarding the Deductibility of Payments by Partnerships and S Corporations for Certain State and Local Income Taxes" to provide clarity and announce rules to be included in the proposed regulations.<sup>6</sup>

The notice explained that Section 164(a) of the Internal Revenue Code allowed deductions for certain taxes, including State and local income taxes, within the taxable year. It further stated that partnerships and S-corporations computed their taxable income or loss in a manner similar to individuals, with certain deductions disallowed. Additionally, the notice defined a "specified income tax payment" as any amount paid by a partnership or S-corporation to a state, a political subdivision of a state, or the District of Columbia to satisfy its liability for income taxes imposed by the Domestic Jurisdiction on the partnership or S corporation". The term specifically excluded income taxes imposed by United States territories and territory political subdivisions. The term does include taxes in which a deduction by a partnership or S-corporation is disallowed under the Code. As a result, under the notice, specified income tax payments would not be considered for the SALT deduction limitation. The standards of the term specify that a qualifying tax would have to be "truly separate". *On a practical basis, the notice meant that if a state levied a structurally separate tax on flow-through entities, paid at the entity levy, the taxes paid on that flow-through tax could be deducted on Federal tax returns without respect to the \$10,000 cap.*

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<sup>iv</sup> Taxpayers with business activity in more than one state must either apportion or allocate the business activity and/or business income to determine the portion of the total activity or income that is taxable under Michigan law.



Table 1 illustrates the impact of a state-level flow-through entity tax using a fictitious LLC organized by Forrest Gump and Benjamin Burford Blue ("Bubba").<sup>v</sup> If Bubba and Forrest were to organize their business as an LLC and pay the state and local income and property taxes shown in Table 1, the adoption of a state-level flow-through entity tax would allow the two men and their company to increase their Federal deductions from \$20,000 to \$36,850.

**Table 1**

<b>Simplified Illustration Demonstrating the Impact of a State Flow-Through Entity Tax</b>				
	<b>Bubba Gump LLC</b>	<b>Bubba's Tax Return</b>	<b>Forrest's Tax Return</b>	<b>Total LLC Plus Members</b>
<i>Without a State Flow-Through Entity Tax</i>				
State/Local Property Taxes on the LLC	\$0	\$5,000	\$5,000	\$10,000
State/Local Income Taxes on the LLC	0	10,000	10,000	20,000
State/Local Property Tax on non-LLC Property	0	3,000	3,000	6,000
State/Local Income Taxes on non-LLC Income	0	425	425	850
<b>Total Taxes Paid</b>	<b>\$0</b>	<b>\$18,425</b>	<b>\$18,425</b>	<b>\$36,850</b>
Amount Deductible on Federal Return	\$0	\$10,000	\$10,000	\$20,000
<b>Total Taxes Deducted by LLC and Members on Federal Returns: \$20,000</b>				
<i>With a State Flow Through Tax</i>				
State/Local Property Taxes on the LLC	\$10,000	\$0	\$0	\$10,000
State/Local Income Taxes on the LLC	20,000	0	0	20,000
State/Local Property Tax on non-LLC Property	0	3,000	3,000	6,000
State/Local Income Taxes on non-LLC Income	0	425	425	850
<b>Total Tax Paid</b>	<b>\$30,000</b>	<b>\$3,425</b>	<b>\$3,425</b>	<b>\$36,850</b>
Amount Deductible on Federal Return	\$30,000	\$3,425	\$3,425	\$36,850
<b>Total Taxes Deducted by LLC and Members on Federal Returns: \$36,850</b>				

<sup>v</sup> These are characters from the 1994 movie "Forrest Gump". In the movie, Forrest Gump and his friend Bubba discuss going into business together on a shrimp boat company once they leave the Army.



## **Flow-Through Legislation in Michigan**

Michigan introduced flow-through entity tax legislation in House Bill 4288 of the 2021-2022 Legislative Session and Senate Bill 1170 of the 2018-2019 Legislative Session. House Bill 5376 was passed in 2021 and became Public Act 135 of 2021, i.e., Chapter 20 of the Michigan Income Tax Act. The Michigan FTE Tax took effect on December 21, 2021, but was retroactive to January 1, 2021.<sup>vi</sup> The continued levy of the tax is contingent upon the existence of the Federal SALT deduction limitation. Under current Federal law, the SALT deduction cap is set to expire in 2025.

In addition to the eligibility requirements of a flow-through entity, to elect into the Michigan FTE Tax a business also must have business activity in Michigan. The FTE Tax is applicable only to the Michigan portion of the positive "business income tax base" that can be attributed to certain direct members of the flow-through entity. These members include individuals, fiduciaries (such as estates or trusts), or other flow-through entities. However, the FTE Tax does not apply to the portion of the business income tax base that can be attributed to direct members who are insurance companies, financial institutions, or C-corporations. For electing flow-through entities, it is necessary to calculate the Michigan portion of the business income tax base before adjusting for the portion that is taxable or nontaxable based on its attribution to the members.<sup>7</sup> To participate, flow-through entities must make an election into the Michigan FTE Tax. Each election is effective for three years: the current tax year in which the payment is made and the following two years.

For practical purposes, the FTE Tax mirrors the Michigan Individual Income Tax (IIT) but is levied against the flow-through entity rather than the individual member(s) of the business. The FTE Tax is equal to the individual income tax rate in Section 51 for that same tax year.<sup>vii</sup> Revenue generated by the FTE tax also is distributed in the same manner as IIT revenue. In fiscal year (FY) 2021-22, approximately 23.8% (1.012% divided by the tax rate of 4.25%) of gross collections (collections before refunds) must be deposited into the School Aid Fund and the balance of the revenue collected must be deposited into the General Fund. In FY 2022-23 and later, the 23.8% share will be increased by not only the lower tax rate of 4.05% in effect for tax year 2023, but by changes in the calculation formula adopted as part of Public Act 4 of 2023.

## **The Prevalence of Flow-Through Entities**

Although sole proprietorships and partnerships have existed for hundreds of years, the advent of LLCs is a relatively recent phenomenon. The first statutes creating LLCs were enacted in 1977. The combination of shielding personal assets from liability (a feature of corporations) with the prospect of lower marginal tax rates (a feature of filing under the individual income tax rather than a corporate income tax or other business tax) has resulted in a steady and rapid growth in the number of LLCs, both as new businesses have formed and from existing businesses eligible to convert to LLC status. (See [Figure 1](#).) Nationally, flow-through firms like S-corporations and other LLCs (including limited liability partnerships) have exhibited a growing share of both total receipts (such as sales revenue) and net business income, although traditional corporations still account for the majority of economic

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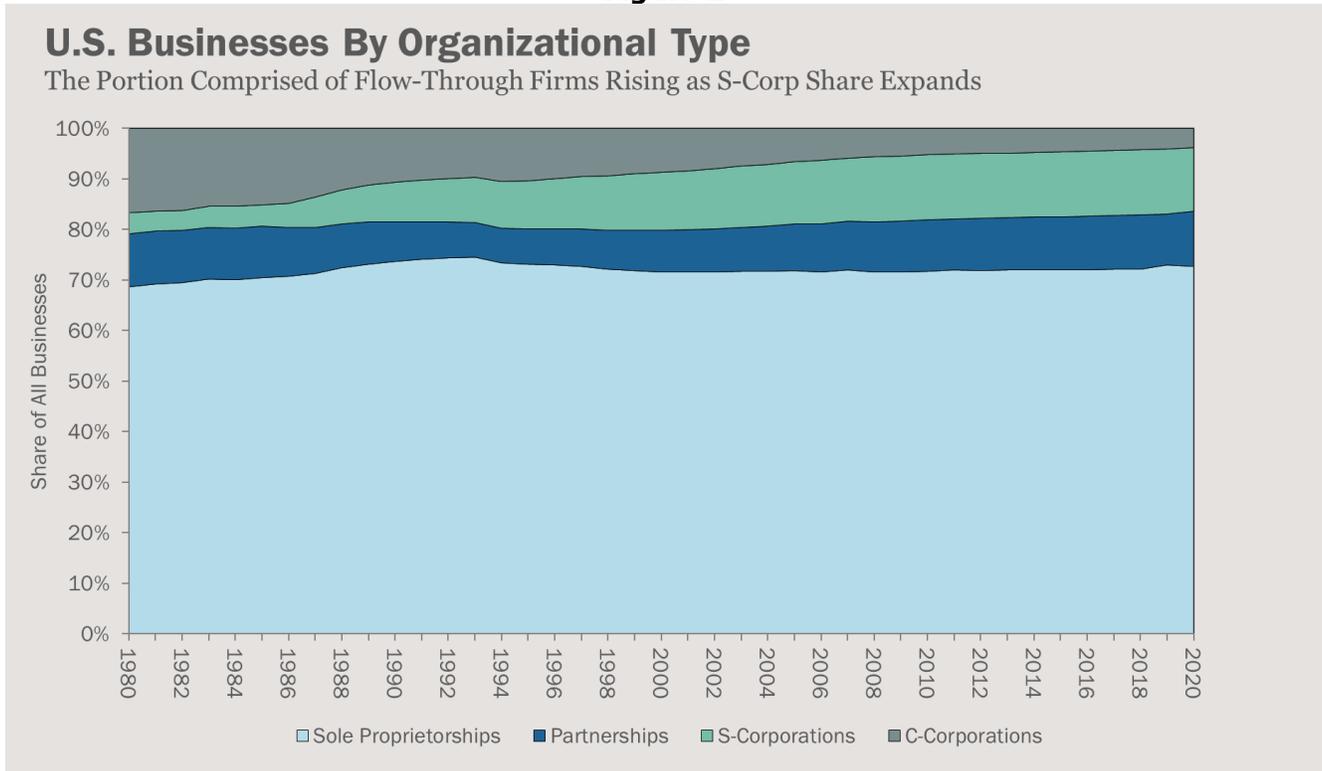
<sup>vi</sup> The terms "pass-through entity" and "flow-through entity" are used interchangeably to describe businesses organized under these forms. As a result, the abbreviation is commonly "PTE", for "pass-through entity." Because Michigan named the tax the "Flow-Through Entity Tax", this paper will use the abbreviation "FTE" despite the potential confusion with the more common use for the "FTE" abbreviation as "full-time employee" or "full-time equated".

<sup>vii</sup> Section 51 of the Income Tax Act levied a tax of 4.25% for tax years 2021 and 2022 and will levy a tax of 4.05% in tax year 2023, on the taxable income of every person other than a corporation.



activity under both of those measures. (See [Figures 2](#) and [3](#)). Based on IRS data for tax year 2019,<sup>viii</sup> the average corporate tax return reported business receipts of \$17.5 million, compared to \$1.7 million for S-corporations, \$1.5 million for partnerships, and \$59,000 for sole proprietorships.

**Figure 1**

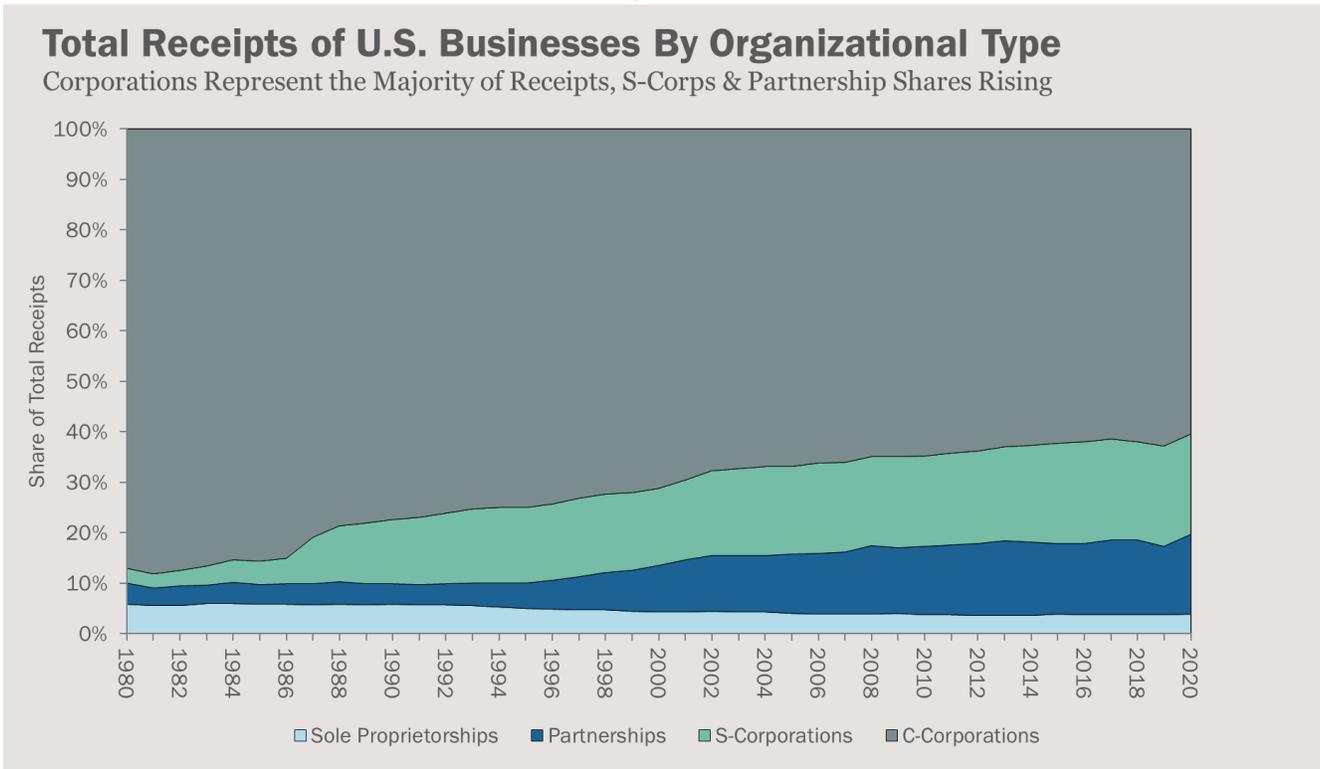


Source: Internal Revenue Service, U.S. Department of Treasury

<sup>viii</sup> While tax year 2020 represents the most recent year of data available, the data could be affected by a variety of factors associated with the COVID-19 pandemic and related stimulus efforts.

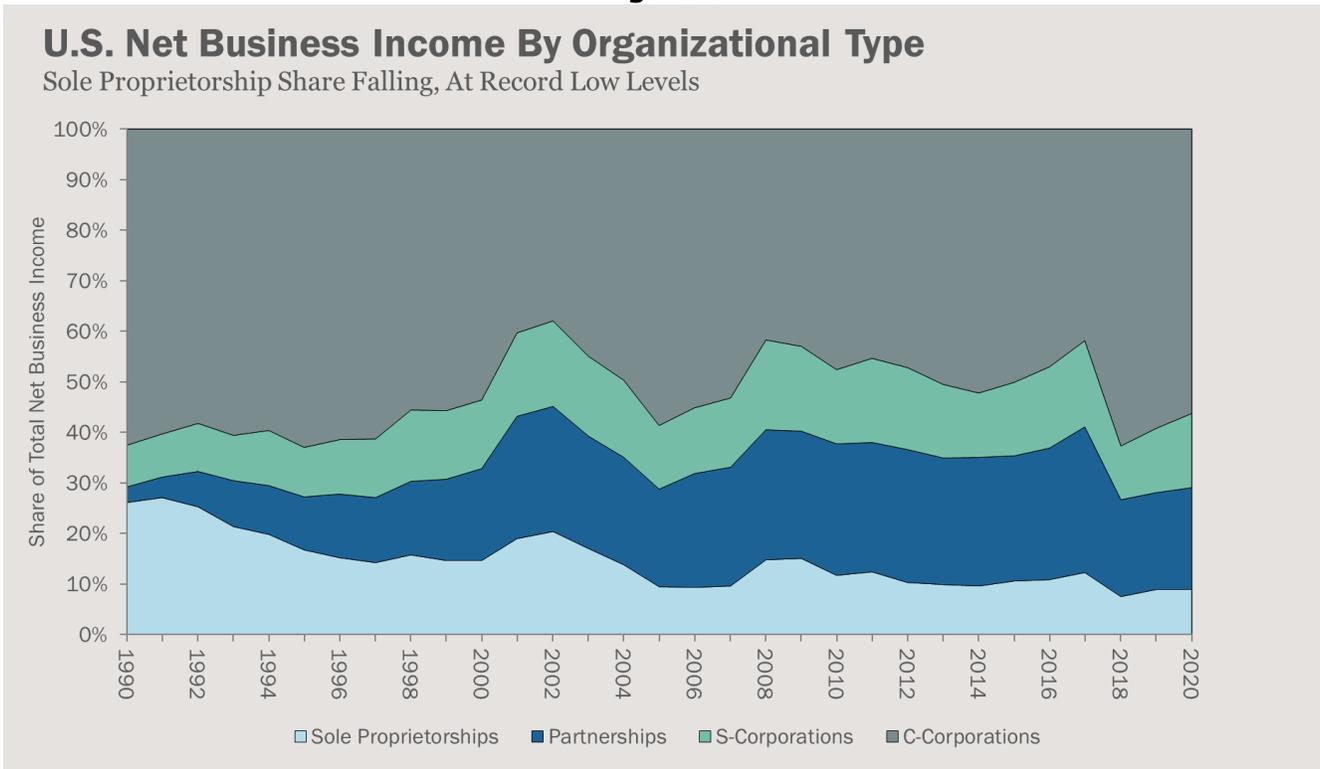


**Figure 2**



Source: Internal Revenue Service. U.S. Department of Treasury

**Figure 3**



Source: Richard Prisinzano. Yale University and Internal Revenue Service. U.S. Department of Treasury



The Department of Licensing and Regulatory Affairs (LARA) maintains records of corporations and LLCs in the State. As of October 1, 2022, there were 789,216 LLCs and 165,233 C-corporations registered in Michigan.<sup>8</sup> The Department also tracks new LLCs and corporations.<sup>9</sup> As shown in [Table 2](#), over the last ten years, the number of new LLCs has exceeded the number of new C-corporations. Similarly, in every year the number of new LLCs has grown more rapidly (or declined by less) than the number of new C-corporations. Furthermore, the number of new C-corporations has often declined from year-to-year, while the number of LLCs has generally increased. Before the COVID-19 pandemic, the number of new LLCs each year averaged 4.7 times the number of new C-corporations. Since the pandemic, the number of new LLCs has averaged 9.2 times the number of new C-corporations.

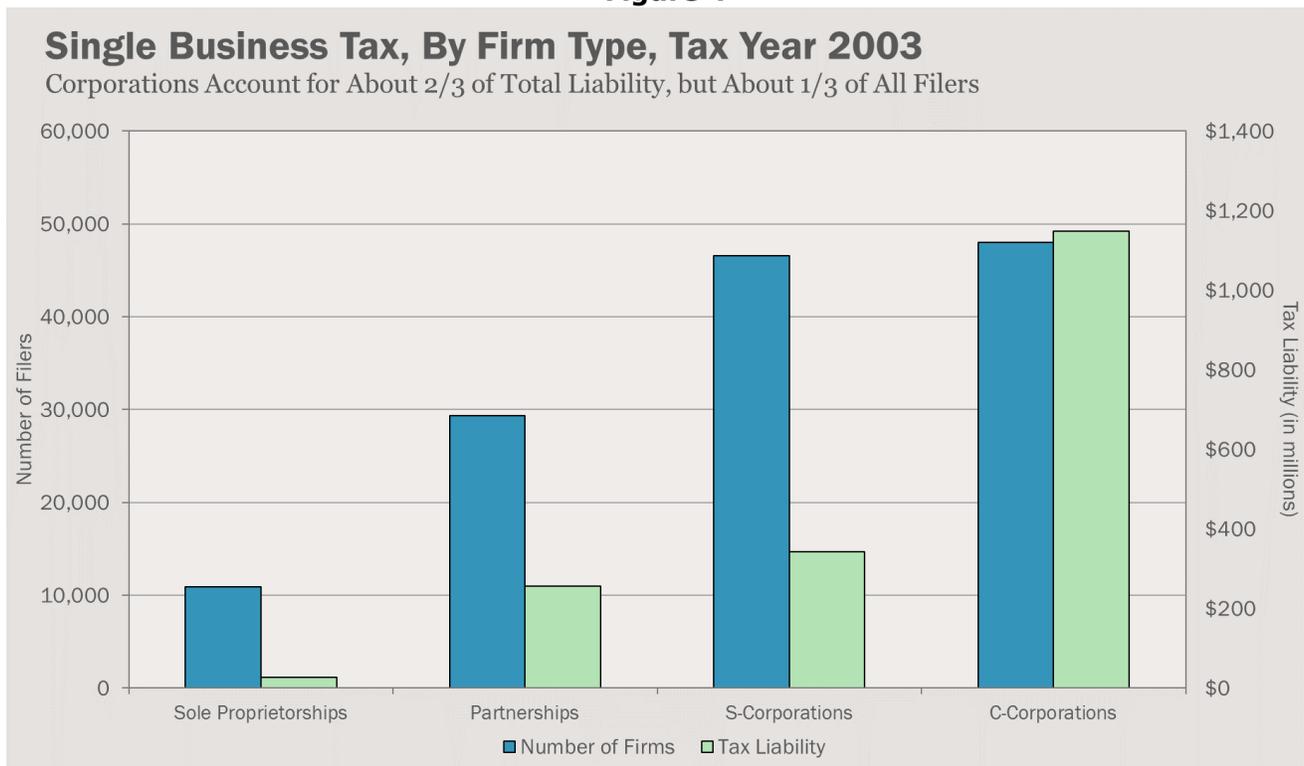
**Table 2**

<b>Year</b>	<b>New LLCs</b>	<b>Pct. Change</b>	<b>New C-Corps</b>	<b>Pct. Change</b>
Oct 1, 2012 - Sept 30, 2013	59,662		15,971	
Oct 1, 2013 - Sept 30, 2014	61,755	3.5%	16,032	0.4%
Oct 1, 2014 - Sept 30, 2015	62,159	0.7%	15,255	-4.8%
Oct 1, 2015 - Sept 30, 2016	67,571	8.7%	15,371	0.8%
Oct 1, 2016 - Sept 30, 2017	71,682	6.1%	14,545	-5.4%
Oct 1, 2017 - Sept 30, 2018	87,011	21.4%	15,473	6.4%
Oct 1, 2018 - Sept 30, 2019	90,879	4.4%	14,699	-5.0%
Oct 1, 2019 - Sept 30, 2020	113,945	25.4%	14,008	-4.7%
Oct 1, 2020 - Sept 30, 2021	151,552	33.0%	15,401	9.9%
Oct 1, 2021 - Sept 30, 2022	132,500	-12.6%	14,247	-7.5%
Oct 1, 2022 - Sept 30, 2023	136,921	3.3%	14,297	0.4%

Although the number of LLCs in Michigan vastly exceeds the number of corporations, corporations tend to represent most business activity in terms of both sales and net business income. Under both the Single Business Tax and the MBT, businesses were taxed regardless of their organizational structure. As a result, information exists to compare different firm types in Michigan, although it is somewhat dated and excludes many firms (mostly sole proprietorships) with an economic footprint so small they were not required to file a return (apportioned gross receipts of less than \$350,000). The data from these two taxes exhibit the same pattern the IRS data illustrated at the national level: flow-through firms outnumber corporations, but corporations account for the majority of economic activity. (See [Figures 4](#) and [5](#)).

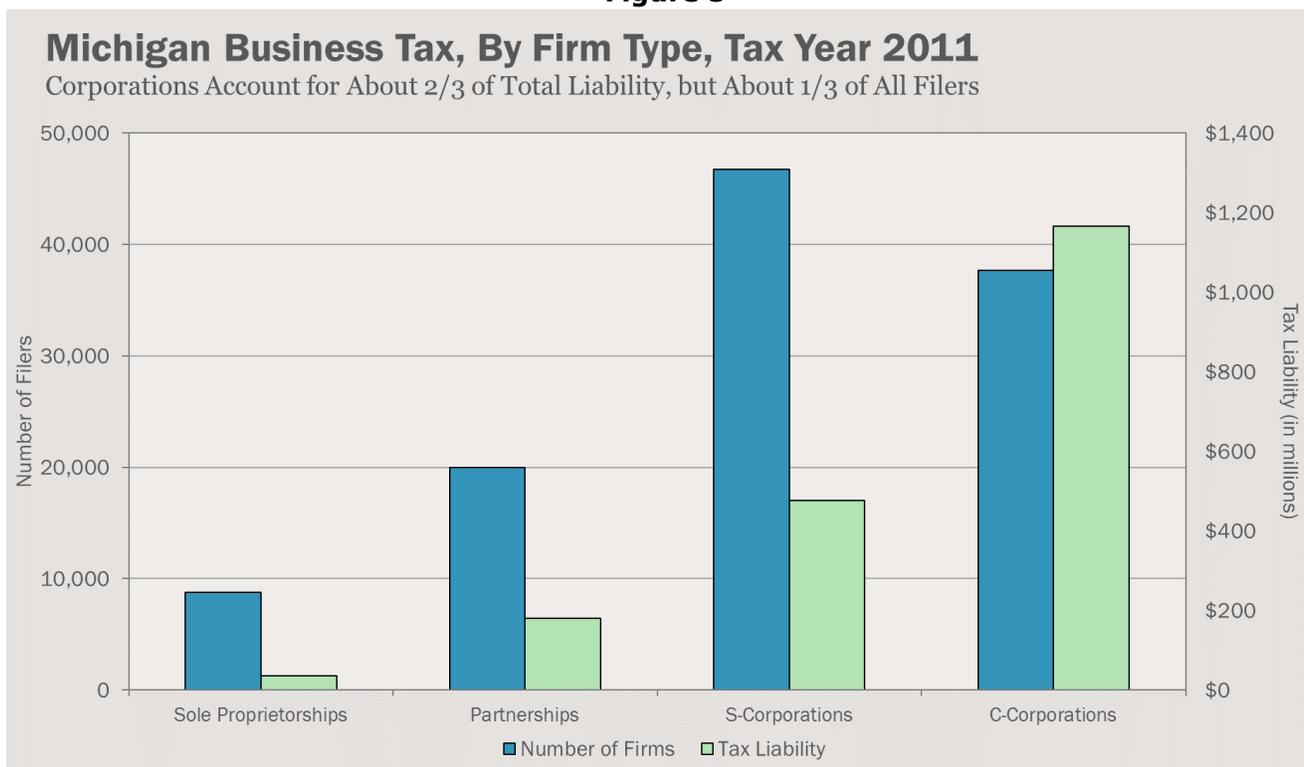


**Figure 4**



Source: Office of Revenue and Tax Analysis, Michigan Department of Treasury

**Figure 5**



Source: Office of Revenue and Tax Analysis, Michigan Department of Treasury



## **Revenue Collections from the FTE Tax and Impact on the Income Tax Rate**

In FY 2021-22, the first year the FTE Tax was levied, Michigan collected \$1.8 billion in FTE Tax revenue. The State expects to receive \$975.7 million under the FTE Tax in FY 2022-23, a 45.3% decline from the FY 2021-22 level. However, the decline does not reflect a massive reduction in business activity in Michigan but from a timing issue created by when the FTE Tax took effect.

S-corporations, partnerships, and certain entities are required to submit quarterly estimated tax payments, typically due on April 15th, July 15th, October 15th, and January 15th of each year. Estimated tax payments are based on the company's projected income and tax liability for the year. While the actual tax liability is determined when the annual tax return is filed, estimated payments allow companies to make reasonably accurate payments based on their income and expenses up to that point. This process helps in ensuring that the company's tax payments are relatively aligned with their income, and evens tax payments (and revenue collections for the state) over the course of the year. To ease the administrative burden of calculating quarterly payments, if a taxpayer's payments total 90% of the previous year's tax liability, the taxpayer is "held harmless" from any underpayment penalties.

As of December 2021, when the FTE Tax took effect, many businesses had already made three of the four quarterly payments for the tax year under the previous tax system. For flow-through businesses, those payments would have been made under the IIT and thus subject to the Federal limits on the SALT deduction. However, the timing of when Michigan enacted the FTE Tax provided an opportunity for qualified businesses to make a single quarterly payment for the fourth quarter that would count as the full tax year payment under the new system—and would be fully deductible (not subject to the Federal SALT limit). Many businesses took advantage of this opportunity. Combined December and January quarterly payments under the IIT (which would include payments by flow-through firms as well as quarterly payments from individuals) averaged \$400.0 million between FY 2012-13 and FY 2020-21, compared to a total of \$924.4 million for December 2021 and January 2022. As a result, combined quarterly IIT payments and FTE tax payments for FY 2021-22 totaled \$3.2 billion, compared to \$1.7 billion in FY 2020-21. This 85.7% increase in revenue largely reflected that, during FY 2021-22, the State essentially collected seven quarterly payments on four quarters of liability (four quarters of tax year 2021 plus three quarters for tax year 2022).<sup>ix</sup>

The increase in revenue associated with the adoption of the FTE tax created two issues, one regarding revenue forecasting and the other for tax policy. The revenue forecasting issue reflected trying to estimate the degree of overpayment for tax year 2021 liabilities (and thus potential refunds under both the IIT and the FTE Tax), the accuracy of the estimated fiscal impact of the FTE Tax legislation, and how these issues might affect future revenue estimates. The estimates for the FTE Tax legislation did not consider when the bill would be signed and were made without knowing the effective date of the legislation. As a result, the revenue estimates for the legislation did not anticipate the timing issues that boosted payments in FY 2021-22. Similarly, revenues over the FY 2020-21 to FY 2021-22 period were already atypically volatile because of many economic and policy issues associated with the pandemic, requiring forecasts to separate the individual portions of the increase attributable to the timing issues from the underlying economic factors affecting liabilities.

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<sup>ix</sup> The \$3.2 billion in collections was even more unusual given the history of payments prior to FY 2020-21. Before FY 2020-21, quarterly IIT payments never exceeded \$1.5 billion and averaged \$1.2 billion per year over the FY 2014-15 through FY 2019-20 period.



The tax policy issue reflected a requirement in the IIT Act that establishes a tax rate based on the growth in General Fund/General Purpose (GF/GP) revenue. Section 206.51(c), adopted in 2015, creates a "trigger" to lower the individual income tax rate if GF/GP revenue grows faster than an adjusted inflation rate, with the calculation using FY 2020-21 revenue and affecting revenue received in FY 2021-22 and later years. When final FY 2021-22 revenue was published, the calculation indicated the State had received \$702.9 million more in revenue than permitted under the cap established in 206.51(c) and the IIT rate would need to be reduced.<sup>x</sup> It is unclear how much of the \$702.9 million of "excess" revenue can be attributed to the timing of the implementation of the FTE Tax, but the increase in revenue associated with combined quarterly IIT payments and FTE Tax payments in FY 2021-22 totaled \$1.5 billion. The statutory earmark of IIT and FTE tax revenue to the School Aid Fund would have directed approximately 23.8% (or \$348.0 million) of that increase to the School Aid Fund. As a result, approximately \$1.1 billion of the GF/GP revenue increase in FY 2021-22 would have reflected increased FTE Tax payments and quarterly IIT payments—58.5% more than the revenue needed to trigger the rate reduction.

These figures suggest that absent the timing issues associated with the adoption of the FTE Tax (which were one-time in nature), the tax rate reduction under 206.51(c) for tax year 2023 either would have not occurred or would have been substantially less. Based on the growth in other business tax revenue (corporate income tax payments increased 19.2% in FY 2021-22) and the increase in IIT revenue not subject to withholding at the Federal level (which increased 39.2% in FY 2021-22), it is likely that somewhere between \$604.7 million and \$864.7 million of the revenue increase in GF/GP revenue reflected the timing issue associated with the adoption of the FTE Tax. If the GF/GP revenue increase attributable to the timing of the FTE Tax adoption were \$604.7 million, the tax reduction would have lowered the rate from 4.25% to 4.22%, while if the total were \$864.7 million, there would have been no reduction in the tax rate at all absent the adoption of the FTE Tax.

## **Conclusion**

Flow-through entities represent a legal form under which businesses may operate. In both Michigan and the United States, the number of flow-through entities has grown substantially since the 1970s, when legislation created new types of flow-through entities that could enjoy certain legal protections against personal assets afforded to traditional corporations. While restrictions exist on what businesses may organize as a flow-through entity, those that do so generally calculate their tax liability under the Federal individual income tax using the (generally) lower marginal tax rates levied on individuals (when compared to traditional corporations).

Businesses are generally able to deduct SALT on their Federal tax returns. However, the TCJA of 2017 limited the SALT deduction on the Federal IIT to \$10,000. This limit negatively affected many flow-through entities and many states have implemented special flow-through entity taxes so that these businesses could continue to fully deduct their state taxes on their Federal returns.

Michigan adopted a flow-through entity tax in December 2021. The timing of the tax's adoption caused revenue to surge in FY 2021-22. The revenue surge created issues for revenue forecasting and affected the IIT tax rate reduction required under Michigan statute when GF/GP revenue grows faster than a modified inflation rate.

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<sup>x</sup> The Michigan Attorney General issued an advisory opinion (OAG No. 7320, 3-23-2023) indicating the rate reduction required under MCL 206.51(c) would reduce the tax rate for a single tax year following the fiscal year in which the limit was exceeded. In August 2023, a lawsuit was initiated against the State Treasurer in the Michigan Court of Claims (*Associated Builders and Contractors of MI v. Eubanks*, Case No. 23-000120-MB) arguing the required reductions are permanent. As of publication, the case remains in litigation.

**State Notes**  
TOPICS OF LEGISLATIVE INTEREST  
Fall 2023



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<sup>1</sup> "What is a Business? Understanding Different Types and Company Sizes", Investopedia, [www.investopedia.com/terms/b/business.asp](http://www.investopedia.com/terms/b/business.asp). Retrieved May 25, 2023.

<sup>2</sup> MCL 206.12.

<sup>3</sup> "Corporate Income Tax", Michigan Department of Treasury, [www.michigan.gov/taxes/business-taxes/cit](http://www.michigan.gov/taxes/business-taxes/cit). Retrieved May 30, 2023.

<sup>4</sup> "Small Business Alternative Credit", Michigan Department of Treasury, [www.michigan.gov/taxes/business-taxes/cit/detail/cit-credits](http://www.michigan.gov/taxes/business-taxes/cit/detail/cit-credits). To be eligible for this credit a taxpayer must meet the following criteria: 1) the taxpayer's total revenue before deductions must be equal to or less than \$20.0 million; 2) the taxpayer's adjusted business income or net income after adjustments subtracted by certain losses must be equal to or less than \$1.3 million (adjusted for inflation); and 3) an officer or shareholder may not receive more than \$180,000 in compensation nor may compensation plus the officer's or shareholder's share of business income exceed \$180,000. A taxpayer that did not meet the eligibility criteria could be eligible for a reduced credit before a complete disqualification.

<sup>5</sup> MCL 206.685.

<sup>6</sup> "IRS News Releases" <https://www.irs.gov/newsroom/irs-provides-certainty-regarding-the-deductibility-of-payments-by-partnerships-and-s-corporations-for-state-and-local-income-taxes>, Retrieved November 1, 2023.

<sup>7</sup> "Notice Regarding the Implementation of the Michigan Flow-Through Entity Tax", MI Department of Treasury, April 6, 2022.

<sup>8</sup> "Total Business Entities as of October 2022", Department of Licensing and Regulatory Affairs, <https://www.michigan.gov/lara/bureau-list/cscl/corps/other/total-business-entities-as-of-october-1-2023>, Retrieved May 31, 2023.

<sup>9</sup> "New Corporation and Limited Liability Company Monthly Totals", Department of Licensing and Regulatory Affairs, [www.michigan.gov/lara/bureau-list/cscl/corps/other/new-corporation-and-limited-liability-company-monthly-totals](http://www.michigan.gov/lara/bureau-list/cscl/corps/other/new-corporation-and-limited-liability-company-monthly-totals), Retrieved October 10, 2023