

**SUBSTITUTE FOR
SENATE BILL NO. 248**

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 325, 687, and 701 (MCL 206.325, 206.687, and 206.701), section 325 as amended and section 687 as added by 2011 PA 38 and section 701 as amended by 2011 PA 311, and by adding chapter 18.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 325. (1) A taxpayer required to file a return under this
2 part may be required to furnish a true and correct copy of any tax
3 return or portion of any tax return and supporting schedules that
4 the taxpayer has filed under the provisions of the internal revenue
5 code.

6 (2) ~~A~~**Except as provided in subsection (3), a** taxpayer shall

1 file an amended return with the department showing any final
2 alteration in, or modification of, the taxpayer's federal income
3 tax return that affects the taxpayer's taxable income under this
4 part and of any similarly related recomputation of tax or
5 determination of deficiency under the internal revenue code. If an
6 increase in taxable income results from a federal audit that
7 increases the taxpayer's federal income tax by less than \$500.00,
8 the requirement under this subsection to file an amended return
9 does not apply but the department may assess an increase in tax
10 resulting from the audit. The amended return shall be filed within
11 ~~120-180~~ days after the final alteration, modification,
12 ~~recomputation, or determination of deficiency.~~ **determination date.**
13 If the department finds upon all the facts that an additional tax
14 under this part is owing, the taxpayer shall immediately pay the
15 additional tax. If the department finds that the taxpayer has
16 overpaid the tax imposed by this part, a credit or refund of the
17 overpayment shall immediately be made as provided in section 30 of
18 1941 PA 122, MCL 205.30. **This subsection does not apply to the**
19 **reporting of a final federal adjustment arising from a partnership**
20 **level audit or an administrative adjustment request required to be**
21 **reported under chapter 18.**

22 (3) For tax years that begin on and after January 1, 2018, a
23 partnership that is not subject to chapter 18, but has determined
24 that the partners' share of income, deductions, and credits
25 previously reported to its partners and included in a return filed
26 under this part requires adjustment, may, at the discretion of the
27 department, file a report with the department and pay the tax due
28 or claim a refund on behalf of its partners in a manner similar to
29 the process set forth in chapter 18. Any refund issued to the

1 partnership under this subsection is in lieu of any overpayment of
2 taxes that may be claimed by the partners.

3 (4) As used in this section:

4 (a) "Administrative adjustment request", "final federal
5 adjustment", and "partnership level audit" mean those terms as
6 defined in section 721.

7 (b) "Final determination date" means the following:

8 (i) Except as provided in subparagraphs (ii) and (iii), if the
9 federal adjustment arises from an IRS audit or other action by the
10 IRS, the final determination date is the first day on which no
11 federal adjustments arising from that audit or other action remain
12 to be finally determined, whether by IRS decision with respect to
13 which all rights of appeal have been waived or exhausted, by
14 agreement, or, if appealed or contested, by a final decision with
15 respect to which all rights of appeal have been waived or
16 exhausted. For agreements required to be signed by the IRS and the
17 taxpayer, the final determination date is the date on which the
18 last party signed the agreement.

19 (ii) For federal adjustments arising from an IRS audit or other
20 action by the IRS, if the taxpayer is a member of a unitary
21 business group and required to file a combined return under section
22 691, the final determination date means the first day on which no
23 related federal adjustments arising from that audit or other action
24 remain to be finally determined, as described in subparagraph (i),
25 for the entire unitary business group.

26 (iii) If the federal adjustment results from filing an amended
27 federal return, a federal refund claim, or an administrative
28 adjustment request or if the federal adjustment is reported on an
29 amended federal return or other similar report filed under section

1 6225(c) of the internal revenue code, the final determination date
2 means the day on which the amended return, refund claim,
3 administrative adjustment request, or other similar report was
4 filed.

5 Sec. 687. (1) A taxpayer required to file a return under this
6 part may be required to furnish a true and correct copy of any
7 return or portion of any return filed under the provisions of the
8 internal revenue code.

9 (2) ~~A-Except as provided in subsection (3),~~ a taxpayer shall
10 file an amended return with the department showing any alteration
11 in or modification of a federal income tax return that affects its
12 tax base under this part. The amended return shall be filed within
13 ~~120-180~~ days after the final determination ~~by the internal revenue~~
14 ~~service date.~~ This subsection does not apply to the reporting of a
15 final federal adjustment arising from a partnership level audit or
16 an administrative adjustment request required to be reported under
17 chapter 18.

18 (3) For tax years that begin on and after January 1, 2018, a
19 partnership that is not subject to chapter 18, but has determined
20 that the partners' share of income, deductions, and credits
21 previously reported to its partners and included in a return filed
22 under this part requires adjustment, may, at the discretion of the
23 department, file a report with the department and pay the tax due
24 or claim a refund on behalf of its partners in a manner similar to
25 the process set forth in chapter 18. Any refund issued to the
26 partnership under this subsection is in lieu of any overpayment of
27 taxes that may be claimed by the partners.

28 (4) A taxpayer that expects to owe additional tax as a result
29 of a pending federal audit may make payments, in a form and manner

1 as prescribed by the department, prior to the final determination
2 date. The department shall credit any payments made under this
3 subsection against any tax liability due on that taxpayer's amended
4 return filed as a result of the federal audit. Payments made under
5 this subsection limit the accrual of any further statutory interest
6 on the amount due. If the department finds that the taxpayer has
7 overpaid the tax due on the amended return, a refund of the
8 overpayment shall immediately be made as provided in section 30 of
9 1941 PA 122, MCL 205.30.

10 (5) As used in this section:

11 (a) "Administrative adjustment request", "final federal
12 adjustment", and "partnership level audit" mean those terms as
13 defined in section 721.

14 (b) "Final determination date" means that term as defined in
15 section 325.

16 Sec. 701. As used in this ~~part~~ **chapter**:

17 (a) "Casino" means that term as defined in section 110.

18 (b) "Casino licensee" means a person licensed to operate a
19 casino under the Michigan ~~gaming control and revenue act~~, **Gaming**
20 **Control and Revenue Act**, 1996 IL 1, MCL 432.201 to 432.226.

21 (c) "Eligible production company" means that term as defined
22 under section 455 of the Michigan business tax act, 2007 PA 36, MCL
23 208.1455.

24 (d) "Flow-through entity" means an entity that for the
25 applicable tax year is treated as an S corporation under section
26 1362(a) of the internal revenue code, a general partnership, a
27 limited partnership, a limited liability partnership, or a limited
28 liability company, that for the applicable tax year is not taxed as
29 a corporation for federal income tax purposes. Flow-through entity

1 does not include any entity disregarded under section 699.

2 (e) "Member" means a shareholder of an S corporation, a
3 partner in a general partnership, a limited partnership, or a
4 limited liability partnership, a member of a limited liability
5 company, or a beneficiary of a trust, that is a flow-through
6 entity.

7 (f) "Nonresident" means an individual who is not a resident of
8 or domiciled in this state, a business entity that does not have
9 its commercial domicile in this state, or a trust not organized in
10 this state.

11 (g) "Partnership" means a taxpayer that is required to or has
12 elected to file as a partnership for federal income tax purposes.

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

15 (i) "Race meeting licensee" and "track licensee" mean a person
16 to whom a race meeting license or track license is issued pursuant
17 to section 8 of the horse racing law of 1995, 1995 PA 279, MCL
18 431.308.

19 (j) "S corporation" means a corporation electing taxation
20 under subchapter S of chapter 1 of subtitle A of the internal
21 revenue code, sections 1361 to 1379 of the internal revenue code.

22 CHAPTER 18

23 Sec. 721. As used in this chapter:

24 (a) "Administrative adjustment request" means an
25 administrative adjustment request filed by a partnership under
26 section 6227 of the internal revenue code.

27 (b) "Audited partnership" means a partnership subject to a
28 partnership level audit resulting in a federal adjustment.

29 (c) "Corporate partner" means a partner, other than a unitary

1 business group, that is subject to tax under chapter 11, including
2 a partner that has unrelated business activity.

3 (d) "Direct partner" means a partner that holds an interest
4 directly in a partnership or pass-through entity.

5 (e) "Exempt partner" means a partner that is exempt from
6 taxation under this act and does not have unrelated business
7 activity.

8 (f) "Federal adjustment" means a change to an item or amount
9 determined under the internal revenue code that is used by a
10 taxpayer to compute tax liability under this act whether that
11 change results from action by the IRS, including a partnership
12 level audit, or the filing of an amended federal return, federal
13 refund claim, or an administrative adjustment request by the
14 taxpayer. A federal adjustment is positive to the extent that it
15 increases tax due under this act and is negative to the extent that
16 it decreases the tax due under this act.

17 (g) "Federal adjustments report" includes methods or forms
18 required by the department for use by a taxpayer to report final
19 federal adjustments, including an amended tax return or information
20 return.

21 (h) "Federal partnership representative" means the person the
22 partnership designates for the reviewed year as the partnership's
23 representative, or the person the IRS has appointed to act as the
24 federal partnership representative, pursuant to section 6223 of the
25 internal revenue code.

26 (i) "Final determination date" means that term as defined in
27 section 325.

28 (j) "Final federal adjustment" means a federal adjustment
29 after the final determination date for that federal adjustment has

1 passed.

2 (k) "Indirect partner" means a partner in a partnership or
3 pass-through entity that itself holds an interest directly, or
4 through another indirect partner, in a partnership or other pass-
5 through entity.

6 (l) "IRS" means the Internal Revenue Service of the United
7 States Department of the Treasury.

8 (m) "Nonresident partner" means an individual, estate, or
9 trust partner that is not a resident partner.

10 (n) "Partner" means a person that holds an interest directly
11 or indirectly in a partnership or pass-through entity.

12 (o) "Partnership" means an entity subject to taxation under
13 subchapter K of the internal revenue code.

14 (p) "Partnership level audit" means an examination by the IRS
15 at the partnership level pursuant to sections 6221 to 6241 of the
16 internal revenue code, which results in federal adjustments.

17 (q) "Pass-through entity" means an S corporation, partnership,
18 limited partnership, limited liability partnership, or limited
19 liability company.

20 (r) "Resident" means that term as defined in section 18.

21 (s) "Resident partner" means an individual, estate, or trust
22 that is a resident for the relevant tax year.

23 (t) "Reviewed year" means the tax year of a partnership that
24 is subject to a partnership level audit from which a federal
25 adjustment arises.

26 (u) "Taxpayer" means all of the following:

27 (i) Any person subject to the taxes imposed by part 1.

28 (ii) A corporation or unitary business group that is liable for
29 a tax, interest, or penalty under part 2. As used in this

1 subparagraph, "corporation" means that term as defined in section
2 605.

3 (iii) A partnership subject to a partnership level audit or a
4 partnership that has made an administrative adjustment request, as
5 well as a tiered partner of that partnership.

6 (v) "Tiered partner" means any partner that is a partnership
7 or other pass-through entity.

8 (w) "Unitary business group" means that term as defined in
9 section 611.

10 (x) "Unrelated business activity" means that term as defined
11 in section 611.

12 Sec. 723. (1) Except for adjustments required to be reported
13 for federal purposes by taking those adjustments into account in
14 the partnership return for the year of adjustment, partnerships and
15 partners shall report final federal adjustments arising from a
16 partnership level audit or an administrative adjustment request and
17 make payments as required under this section.

18 (2) With respect to an action required or permitted to be
19 taken by a partnership under this section and any other proceeding
20 or action permitted under this chapter or 1941 PA 122, MCL 205.1 to
21 205.31, the state partnership representative for the reviewed year
22 has the sole authority to act on behalf of the partnership. The
23 partnership's direct partners and indirect partners are bound by
24 those actions. The state partnership representative for the
25 reviewed year is the partnership's federal partnership
26 representative unless the partnership designates in writing another
27 person as its state partnership representative. The department may
28 establish reasonable qualifications and procedures for designating
29 a person, other than the federal partnership representative, to be

1 the state partnership representative.

2 (3) Except for final federal adjustments subject to a properly
3 made election under subsection (4), final federal adjustments must
4 be reported as follows:

5 (a) No later than 90 days after the final determination date,
6 the partnership shall do all of the following:

7 (i) File a completed federal adjustments report, including
8 information as required by the department.

9 (ii) Report to each of its direct partners for the reviewed
10 year their distributive share of the final federal adjustments
11 including information as required by the department.

12 (iii) Submit a payment on behalf of any nonresident partner
13 previously included on a composite return for the reviewed year for
14 the additional amount of tax that would have been due had the final
15 federal adjustments been reported properly as required.

16 (b) If the partner's increase in the amount of tax due that
17 results from the final federal adjustment is \$25.00 or more, no
18 later than 180 days after the final determination date, each direct
19 partner for that reviewed year that is a corporate partner,
20 resident partner, or nonresident partner whose payment is not
21 included in the composite return payment under subdivision (a) (iii)
22 shall file a federal adjustments report reporting that partner's
23 share of the adjustments reported under subdivision (a) (ii) and pay
24 any additional amount of tax due as if final federal adjustments
25 had been properly reported, plus any penalty and interest as
26 provided under 1941 PA 122, MCL 205.1 to 205.31. If the department
27 determines that the taxpayer has overpaid the tax imposed by this
28 act, a credit or refund of the overpayment shall be issued
29 immediately as provided in section 30 of 1941 PA 122, MCL 205.30.

1 (4) An audited partnership that makes an election under this
2 subsection is subject to the laws related to reporting, assessment,
3 payment, and collection of the tax calculated under this act and
4 under 1941 PA 122, MCL 205.1 to 205.31, and shall do all of the
5 following:

6 (a) No later than 90 days after the final determination date,
7 file a completed federal adjustments report, including information
8 as required by the department, and notify the department that it is
9 making the election under this subsection.

10 (b) Subject to the limitation in subsection (5), no later than
11 180 days after the final determination date, exclude from final
12 federal adjustments the distributive share of those adjustments
13 attributed to direct exempt partners not subject to the tax under
14 this act and pay an amount equal to the sum of the following along
15 with any penalty and interest as provided in 1941 PA 122, MCL 205.1
16 to 205.31, in lieu of taxes owed by its direct partners and
17 indirect partners:

18 (i) For the distributive shares of the remaining final federal
19 adjustments that are attributed to direct corporate partners,
20 determine the amount allocated or apportioned to this state under
21 part 2 and multiply that share amount by the tax rate imposed under
22 section 623 for the reviewed year.

23 (ii) For the distributive shares of the remaining final federal
24 adjustments that are attributed to direct tiered partners
25 determine, as prescribed by the department, as follows:

26 (A) The distributive shares that are attributed to indirect
27 corporate partners and that are allocated or apportioned to this
28 state under part 2 and multiply that amount by the tax rate imposed
29 under section 623 for the reviewed year.

1 (B) The distributive shares that are attributed to indirect
2 resident or nonresident partners and that are allocated or
3 apportioned to this state under part 1 and multiply that amount by
4 the tax rate imposed under section 51 for the reviewed year.

5 (C) For the remaining distributive shares of the final federal
6 adjustments that are not attributed under sub-subparagraph (A) or
7 (B), determine the amount allocated or apportioned to this state
8 under part 2 and multiply that amount by the tax rate imposed under
9 section 623 for the reviewed year.

10 (iii) For the distributive shares of the remaining final federal
11 adjustments that are attributed to direct partners subject to the
12 tax under part 1, determine the amount allocated and apportioned to
13 this state under part 1 and multiply that amount by the tax rate
14 imposed under section 51 for the reviewed year.

15 (5) In determining the amount of the tax under subsection
16 (4)(b), if reasonably identified by the audited partnership, final
17 federal adjustments shall not include the distributive share of
18 final federal adjustments attributed to any direct or indirect
19 corporate partner that is unitary with the audited partnership for
20 apportionment purposes as provided under section 663.

21 (6) The direct and indirect partners of an audited partnership
22 that are tiered partners, and all of the partners of those tiered
23 partners that are subject to tax under this act are subject to the
24 reporting and payment requirements of subsection (3) and the tiered
25 partners are entitled to make the elections provided in subsections
26 (4) and (7). The tiered partners or their partners shall make
27 required reports and payments no later than 90 days after the time
28 for filing and furnishing statements to tiered partners and their
29 partners as established under section 6226 of the internal revenue

1 code.

2 (7) In accordance with procedures adopted by the department,
3 an audited partnership or tiered partner may submit an application
4 to the department, in a form and manner as prescribed by the
5 department, for an alternative reporting and payment method within
6 the time allowed for an election under subsection (3) or (4), as
7 applicable. If the application is approved by the department, an
8 audited partnership or tiered partner shall enter into an agreement
9 with the department to utilize an alternative reporting and payment
10 method, including applicable time requirements or any other
11 provision of this section, if the audited partnership or tiered
12 partner demonstrates that the requested method will reasonably
13 provide for the reporting and payments of taxes, penalties, and
14 interest due under this section.

15 (8) An election made under subsection (4) or (7) is
16 irrevocable, unless the department, in its discretion, determines
17 otherwise. If properly reported and paid by the audited partnership
18 or tiered partner, the amount determined under subsection (4) (b) or
19 alternatively under subsection (7) is considered paid in lieu of
20 taxes owed by its direct and indirect partners, to the extent
21 applicable, on the same final federal adjustments. The direct
22 partners or indirect partners may not take any deduction or credit
23 under this act for this amount or claim a refund of the amount.
24 This subsection does not preclude a direct resident partner from
25 claiming a credit under section 255 against taxes paid to this
26 state under this act, for any amounts paid by the audited
27 partnership or tiered partner on the resident partner's behalf to
28 another state or local tax jurisdiction. If a partnership or tiered
29 partner fails to timely make any report or payment as required

1 under this section, the department may assess direct partners or
2 indirect partners for taxes owed as determined based on the best
3 information available.

4 (9) If a taxpayer files a federal adjustments report or an
5 amended return as required and within the time period specified in
6 this section, the department may not assess additional tax,
7 interest, and penalties arising from final federal adjustments
8 after the expiration of the limitations period specified in section
9 27a of 1941 PA 122, MCL 205.27a. If a taxpayer fails to file the
10 federal adjustments report within the time period specified in this
11 section or the taxpayer files a federal adjustments report that
12 omits adjustments or understates the correct amount of tax owed,
13 the department may assess additional tax, interest, and penalties
14 arising from those federal adjustments if the department issues a
15 notice of assessment to the taxpayer within 6 years after the final
16 determination date.

17 (10) A taxpayer that expects to owe additional tax as a result
18 of a pending partnership level audit may make payments, as
19 prescribed by the department, prior to the due date of the federal
20 adjustments report. The department shall credit any payments
21 against any tax liability ultimately found to be due under the
22 federal adjustments report and any payments made limit the accrual
23 of further statutory interest on that amount.

24 (11) Except for adjustments required to be reported for
25 federal purposes by taking those adjustments into account in the
26 partnership return for the year of adjustment, a taxpayer may file
27 a claim for a refund or credit of the overpayment of the tax
28 arising from final federal adjustments before the expiration of the
29 statute of limitations established under section 27a of 1941 PA

1 122, MCL 205.27a. For a taxpayer that is a partnership, any claim
2 for a refund or credit under this section must be made within 2
3 years of the final determination date of the federal adjustment.

4 (12) The time periods provided for in this section may be
5 extended as provided under either of the following:

6 (a) Automatically, upon written notice to the department, by
7 60 days for an audited partnership or tiered partner that has
8 10,000 or more direct partners.

9 (b) By written agreement between the taxpayer and the
10 department.

11 (13) The department may promulgate rules to implement this
12 section and establish procedures and interim time periods for the
13 reports and payments required by tiered partners and their partners
14 and for making the elections under this section. To the extent
15 practicable, the department shall establish rules and regulations
16 that conform as closely as possible to the federal rules and
17 procedures.

18 Sec. 725. This chapter is effective and applies to all tax
19 years that begin on and after January 1, 2018.

20 Enacting section 1. This amendatory act is intended to be
21 retroactive and apply to all tax years that begin on and after
22 January 1, 2018.