

**SUBSTITUTE FOR
SENATE BILL NO. 1035**

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 by 2011 PA 38, 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 days after the final alteration, modification, recomputation,
12 or determination of deficiency. If the department finds upon all
13 the facts that an additional tax under this part is owing, the
14 taxpayer shall immediately pay the additional tax. If the
15 department finds that the taxpayer has overpaid the tax imposed by
16 this part, a credit or refund of the overpayment shall immediately
17 be made as provided in section 30 of 1941 PA 122, MCL 205.30. **This**
18 **subsection does not apply to the reporting of a final federal**
19 **adjustment arising from a partnership level audit or an**
20 **administrative adjustment request required to be reported under**
21 **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.



(4) As used in this section, "administrative adjustment request", "final federal adjustment", and "partnership level audit" mean those terms as defined in section 721.

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

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

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

(4) As used in this section, "administrative adjustment request", "final federal adjustment", and "partnership level audit" mean those terms as defined in section 721.

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

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



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

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

(d) "Flow-through entity" means an entity that for the applicable tax year is treated as an S corporation under section 1362(a) of the internal revenue code, a general partnership, a limited partnership, a limited liability partnership, or a limited liability company, that for the applicable tax year is not taxed as a corporation for federal income tax purposes. Flow-through entity does not include any entity disregarded under section 699.

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

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

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

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

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



1 431.308.

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

5 **CHAPTER 18**

6 **Sec. 721. As used in this chapter:**

7 (a) "Administrative adjustment request" means an
8 administrative adjustment request filed by a partnership under
9 section 6227 of the internal revenue code.

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

12 (c) "Corporate partner" means a partner, other than a unitary
13 business group, that is subject to tax under chapter 11, including
14 a partner that has unrelated business activity.

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

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

20 (f) "Federal adjustment" means a change to an item or amount
21 determined under the internal revenue code that is used by a
22 taxpayer to compute tax liability under this act whether that
23 change results from action by the IRS, including a partnership
24 level audit, or the filing of an amended federal return, federal
25 refund claim, or an administrative adjustment request by the
26 taxpayer. A federal adjustment is positive to the extent that it
27 increases tax due under this act and is negative to the extent that
28 it decreases the tax due under this act.

29 (g) "Federal adjustments report" includes methods or forms



1 required by the department for use by a taxpayer to report final
2 federal adjustments, including an amended tax return or information
3 return.

4 (h) "Federal partnership representative" means the person the
5 partnership designates for the reviewed year as the partnership's
6 representative, or the person the IRS has appointed to act as the
7 federal partnership representative, pursuant to section 6223 of the
8 internal revenue code.

9 (i) "Final determination date" means the following:

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

20 (ii) For federal adjustments arising from a partnership level
21 audit, if the taxpayer filed as a person included in a unitary
22 business group, the final determination date means the first day on
23 which no related federal adjustments arising from that audit remain
24 to be finally determined, as described in subparagraph (i), for the
25 entire unitary business group.

26 (iii) If the federal adjustment results from filing an
27 administrative adjustment request, the final determination date
28 means the day on which the administrative adjustment request was
29 filed.



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

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

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

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

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

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

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

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

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

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

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

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

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



(ii) A corporation or unitary business group that is liable for a tax, interest, or penalty under part 2. As used in this subparagraph, "corporation" means that term as defined in part 2.

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

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

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

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

Sec. 723. (1) Except for adjustments required to be reported for federal purposes under section 6225(a)(2) of the internal revenue code, partnerships and partners shall report final federal adjustments arising from a partnership level audit or an administrative adjustment request and make payments as required under this section.

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



1 a person, other than the federal partnership representative, to be
2 the state partnership representative.

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

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

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

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

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

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



1 immediately as provided in section 30 of 1941 PA 122, MCL 205.30.

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

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

11 (b) No later than 180 days after the final determination date,
12 exclude from final federal adjustments the distributive share of
13 those adjustments attributed to direct exempt partners not subject
14 to the tax under this act and pay an amount equal to the sum of the
15 following along with any penalty and interest as provided in 1941
16 PA 122, MCL 205.1 to 205.31, in lieu of taxes owed by its direct
17 partners and 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 (c) If reasonably identified by the audited partnership,
16 exclude the share of final federal adjustments attributed to any
17 direct or indirect corporate partner that is unitary with the
18 audited partnership for apportionment purposes as provided under
19 section 663.

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



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

14 (7) An election made under subsection (4) or (6) is
15 irrevocable, unless the department, in its discretion, determines
16 otherwise. If properly reported and paid by the audited partnership
17 or tiered partner, the amount determined under subsection (4) (b) or
18 alternatively under subsection (6) is considered paid in lieu of
19 taxes owed by its direct and indirect partners, to the extent
20 applicable, on the same final federal adjustments. The direct
21 partners or indirect partners may not take any deduction or credit
22 under this act for this amount or claim a refund of the amount.
23 This subsection does not preclude a direct resident partner from
24 claiming a credit under section 255 against taxes paid to this
25 state under this act, for any amounts paid by the audited
26 partnership or tiered partner on the resident partner's behalf to
27 another state or local tax jurisdiction. If a partnership or tiered
28 partner fails to timely make any report or payment as required
29 under this section, the department may assess direct partners or



1 indirect partners for taxes owed as determined based on the best
2 information available.

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

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

23 (10) Except for final federal adjustments required to be
24 reported for federal purposes under section 6224(a)(2) of the
25 internal revenue code, a taxpayer may file a claim for a refund or
26 credit of the overpayment of the tax arising from federal
27 adjustments made by the IRS before the expiration of the statute of
28 limitations established under section 27a of 1941 PA 122, MCL
29 205.27a. For a taxpayer that is a partnership, any claim for a



1 refund or credit under this section must be made within 2 years of
2 the final determination date of the federal adjustment.

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

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

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

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

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

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

