

**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.

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

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

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

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

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

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

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

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

4 (c) "Eligible production company" means that term as defined  
5 under section 455 of the Michigan business tax act, 2007 PA 36, MCL  
6 208.1455.

7 (d) "Flow-through entity" means an entity that for the  
8 applicable tax year is treated as an S corporation under section  
9 1362(a) of the internal revenue code, a general partnership, a  
10 limited partnership, a limited liability partnership, or a limited  
11 liability company, that for the applicable tax year is not taxed as  
12 a corporation for federal income tax purposes. Flow-through entity  
13 does not include any entity disregarded under section 699.

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

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

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

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

27 (i) "Race meeting licensee" and "track licensee" mean a person  
28 to whom a race meeting license or track license is issued pursuant  
29 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           (2) With respect to an action required or permitted to be  
20 taken by a partnership under this section and any other proceeding  
21 or action permitted under this chapter or 1941 PA 122, MCL 205.1 to  
22 205.31, the state partnership representative for the reviewed year  
23 has the sole authority to act on behalf of the partnership. The  
24 partnership's direct partners and indirect partners are bound by  
25 those actions. The state partnership representative for the  
26 reviewed year is the partnership's federal partnership  
27 representative unless the partnership designates in writing another  
28 person as its state partnership representative. The department may  
29 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) Subject to the limitation in subsection (5), no later than  
12 180 days after the final determination date, exclude from final  
13 federal adjustments the distributive share of those adjustments  
14 attributed to direct exempt partners not subject to the tax under  
15 this act and pay an amount equal to the sum of the following along  
16 with any penalty and interest as provided in 1941 PA 122, MCL 205.1  
17 to 205.31, in lieu of taxes owed by its direct partners and  
18 indirect partners:

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

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

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

1 under section 623 for the reviewed year.

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

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

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

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

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

1 partners as established under section 6226 of the internal revenue  
2 code.

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

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

1 partner fails to timely make any report or payment as required  
2 under this section, the department may assess direct partners or  
3 indirect partners for taxes owed as determined based on the best  
4 information available.

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

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

25 (11) Except for final federal adjustments required to be  
26 reported for federal purposes under section 6225(a)(2) of the  
27 internal revenue code, a taxpayer may file a claim for a refund or  
28 credit of the overpayment of the tax arising from federal  
29 adjustments made by the IRS before the expiration of the statute of

1 limitations established under section 27a of 1941 PA 122, MCL  
2 205.27a. For a taxpayer that is a partnership, any claim for a  
3 refund or credit under this section must be made within 2 years of  
4 the final determination date of the federal adjustment.

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

7 (a) Automatically, upon written notice to the department, by  
8 60 days for an audited partnership or tiered partner that has  
9 10,000 or more direct partners.

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

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

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

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