

SENATE BILL NO. 1035

July 23, 2020, Introduced by Senator RUNESTAD and referred to the Committee on Finance.

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

1 the taxpayer has filed under the provisions of the internal revenue
2 code.

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

25 (3) For tax years that begin on and after January 1, 2018, a
26 partnership that is not subject to chapter 18, but has determined
27 that the partners' share of income, deductions, and credits
28 previously reported to its partners and included in a return filed
29 under this part requires adjustment, may, at the discretion of the

1 department, file a report with the department and pay the tax due
2 or claim a refund on behalf of its partners in a manner similar to
3 the process set forth in chapter 18.

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

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

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

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

28 (4) As used in this section, "administrative adjustment
29 request", "final federal adjustment", and "partnership level audit"

1 mean those terms as defined in section 721.

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

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

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

7 (c) "Eligible production company" means that term as defined
8 under section 455 of the Michigan business tax act, 2007 PA 36, MCL
9 208.1455.

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

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

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

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

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

1 (i) "Race meeting licensee" and "track licensee" mean a person
2 to whom a race meeting license or track license is issued pursuant
3 to section 8 of the horse racing law of 1995, 1995 PA 279, MCL
4 431.308.

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

8 CHAPTER 18

9 Sec. 721. As used in this chapter:

10 (a) "Administrative adjustment request" means an
11 administrative adjustment request filed by a partnership under
12 section 6227 of the internal revenue code.

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

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

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

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

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

1 increases tax due under this act and is negative to the extent that
2 it decreases the tax due under this act.

3 (g) "Federal adjustments report" includes methods or forms
4 required by the department for use by a taxpayer to report final
5 federal adjustments, including an amended tax return or information
6 return.

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

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

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

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

29 (iii) If the federal adjustment results from filing an

1 administrative adjustment request, the final determination date
2 means the day on which the administrative adjustment request was
3 filed.

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

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

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

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

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

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

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

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

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

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

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

1 adjustment arises.

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

3 (i) Any person subject to the taxes imposed by part 1 or
4 subject to the withholding requirements under chapter 17.

5 (ii) A corporation, insurance company, financial institution,
6 or unitary business group, that is liable for a tax, interest, or
7 penalty under part 2. As used in this subparagraph, "corporation",
8 "insurance company", and "financial" institution" mean those terms
9 as defined in part 2.

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

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

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

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

23 (2) With respect to an action required or permitted to be
24 taken by a partnership under this section and any other proceeding
25 or action permitted under this chapter or 1941 PA 122, MCL 205.1 to
26 205.31, the state partnership representative for the reviewed year
27 has the sole authority to act on behalf of the partnership. The
28 partnership's direct partners and indirect partners are bound by
29 those actions. The state partnership representative for the

1 reviewed year is the partnership's federal partnership
2 representative unless the partnership designates in writing another
3 person as its state partnership representative. The department may
4 establish reasonable qualifications and procedures for designating
5 a person, other than the federal partnership representative, to be
6 the state partnership representative.

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

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

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

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

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

21 (b) If the increase in the amount of tax due that results from
22 the partnership level audit is \$25.00 or more, no later than 180
23 days after the final determination date, each direct partner for
24 that reviewed year that is a corporate partner, resident partner,
25 or nonresident partner that is not included in the payment under
26 subdivision (a) (iii) shall file a federal adjustments report
27 reporting that partner's share of the adjustments reported under
28 subdivision (a) (ii) and pay any additional amount of tax due as if
29 final federal adjustments had been properly reported, plus any

1 penalty and interest as provided under 1941 PA 122, MCL 205.1 to
2 205.31. If the department determines that the taxpayer has overpaid
3 the tax imposed by this act, a credit or refund of the overpayment
4 shall be issued immediately as provided in section 30 of 1941 PA
5 122, MCL 205.30.

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

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

15 (b) No later than 180 days after the final determination date,
16 pay an amount equal to the sum of the following, along with any
17 penalty and interest as provided in 1941 PA 122, MCL 205.1 to
18 205.31, in lieu of taxes owed by its direct partners and indirect
19 partners:

20 (i) Exclude from final federal adjustments both the share of
21 these adjustments attributed to direct exempt partners not subject
22 to tax under this act and, if reasonably identified by the audited
23 partnership, the share of final federal audit adjustments
24 attributed to any direct or indirect corporate partner that is
25 included in a unitary business group with the audited partnership
26 for apportionment purposes as provided under section 663.

27 (ii) For the shares of the final federal adjustments remaining
28 after the exclusion under subparagraph (i) that are attributed to
29 direct corporate partners, determine the amount of shares that are

1 allocated or apportioned to this state under part 2 and multiply
2 that share amount by the tax rate imposed under section 623 for the
3 reviewed year.

4 (iii) For the shares of the final federal adjustments remaining
5 after the exclusions under subparagraphs (i) and (ii) that are
6 attributed to direct tiered partners as follows:

7 (A) Determine, as prescribed by the department, the amount of
8 shares that are attributed to an indirect corporate partner and
9 that are allocated or apportioned to this state under part 2 and
10 multiply that share amount by the tax rate imposed under section
11 623 for the reviewed year.

12 (B) Determine, as prescribed by the department, the amount of
13 shares that are attributed to an indirect resident or nonresident
14 partner and that are allocated or apportioned to this state under
15 part 1 and multiply that share amount by the tax rate imposed under
16 section 51 for the reviewed year.

17 (C) For the remaining shares of final federal adjustments that
18 are not attributed under sub-subparagraph (A) or (B), determine the
19 amount of shares allocated or apportioned to this state under part
20 2 and multiply that share amount by the tax rate imposed under
21 section 623 for the reviewed year.

22 (iv) For the shares of the final federal adjustments remaining
23 after the exclusions under subparagraphs (i), (ii), and (iii) that are
24 attributed to direct partners subject to the tax under part 1,
25 determine the amount of shares that are allocated and apportioned
26 to this state under part 1 and multiply that share amount by the
27 tax rate imposed under section 51 for the reviewed year.

28 (5) The direct and indirect partners of an audited partnership
29 that are tiered partners, and all of the partners of those tiered

1 partners that are subject to tax under this act are subject to the
2 reporting and payment requirements of subsection (3) and the tiered
3 partners are entitled to make the elections provided in subsections
4 (4) and (6). The tiered partners or their partners shall make
5 required reports and payments no later than 90 days after the time
6 for filing and furnishing statements to tiered partners and their
7 partners as established under section 6226 of the internal revenue
8 code.

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

21 (7) An election made under subsection (4) or (6) is
22 irrevocable, unless the department, in its discretion, determines
23 otherwise. If properly reported and paid by the audited partnership
24 or tiered partner, the amount determined under subsection (4)(b) or
25 alternatively under subsection (6) is considered paid in lieu of
26 taxes owed by its direct and indirect partners, to the extent
27 applicable, on the same final federal adjustments. The direct
28 partners or indirect partners may not take any deduction or credit
29 under this act against this amount or claim a refund of the amount.

1 This subsection does not preclude a direct resident partner from
2 claiming a credit against taxes paid to this state under this act,
3 any amounts paid by the audited partnership or tiered partner on
4 the resident partner's behalf to another state or local tax
5 jurisdiction in accordance with section 255. If a partnership or
6 tiered partner fails to timely make any report or payment as
7 required under this section, the department may assess direct
8 partners or indirect partners for taxes owed as determined based on
9 the best information available.

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

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

1 (10) Except for final federal adjustments required to be
2 reported for federal purposes under section 6224(a)(2) of the
3 internal revenue code, a taxpayer may file a claim for a refund or
4 credit of the overpayment of the tax arising from federal
5 adjustments made by the IRS before the expiration of the statute of
6 limitations established under section 27a of 1941 PA 122, MCL
7 205.27a. For a taxpayer that is a partnership, any claim for a
8 refund or credit under this section must be made within 2 years of
9 the final determination date of the federal adjustment.

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

12 (a) Automatically, upon written notice to the department, by
13 60 days for an audited partnership or tiered partner that has
14 10,000 or more direct partners.

15 (b) By written agreement between the taxpayer and the
16 department.

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

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

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