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BILL ANALYSIS

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Senate Bill 248 (Substitute H-1 as passed by the House) *(enrolled version)*
Sponsor: Senator Jim Runestad
Senate Committee: Finance
House Committee: Tax Policy

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## RATIONALE

In 2015, the Federal government enacted the Bipartisan Budget Act (BBA). Provisions in the BBA allow the Internal Revenue Service (IRS) to conduct partnership-level audits (as opposed to audits of individual partners) and to assess the partnership, if need, as part of a centralized partnership audit regime. Apparently, this approach is more administratively efficient for the auditing of partnerships. However, as a result of the change, some contend that the State of Michigan now must address how the regime affects partnerships' tax liabilities and filing responsibilities under State law.

## CONTENT

**The bill would add Chapter 18 to the Income Tax Act to do the following:**

- **Require partnerships and partners to report final Federal adjustments arising from a partnership level audit or an administrative adjustment request and to make payments as required.**
- **Specify that with respect to actions specified under the bill, the State partnership representative for the reviewed year would have the sole authority to act on behalf of the partnership.**
- **Allow the Department of Treasury to establish reasonable qualifications and procedures for designating a person, other than the Federal representative, to be the State representative.**
- **Prescribe the method for reporting final Federal adjustments.**
- **Prescribe the procedures for an audited partnership that chose to make an election and pay the applicable taxes under Chapter 18.**
- **Specify that if a taxpayer filed a Federal adjustments report or an amended return within the time period specified, the Department could not assess additional tax, interest, and penalties.**
- **Allow a taxpayer that expected to owe additional tax as a result of a partnership level audit to make payments before the report due date.**
- **Allow the Department to promulgate rules to implement Chapter 18.**
- **Specify that Chapter 18 would be effective and would apply to all tax years that began on and after January 1, 2018.**

**The bill also would amend the Act to specify that requirements to file an amended return would 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 proposed Chapter 18.**

The bill states that it is retroactive and applies to all tax years that begin on and after January 1, 2018.

Definitions

As used in proposed Chapter 18, the listed terms would have the following definitions.

"Audited partnership" would mean a partnership subject to a partnership level audit resulting in a Federal adjustment. "Partnership" would mean an entity subject to taxation under subchapter K of the Internal Revenue Code (IRC).

"Partnership level audit" would mean an examination by the IRS at the partnership level pursuant to the IRC, which results in Federal adjustments. "Federal adjustment" would mean a change to an item or amount determined under the IRC that is used by a taxpayer to compute tax liability under the Income Tax Act whether that change results from action by the IRS, including a partnership level audit, or the filing of an amended Federal return, Federal refund claim, or an administrative adjustment request by the taxpayer. A Federal adjustment is positive to the extent that it increases tax due under the Act and is negative to the extent that it decreases the tax due under the Act.

"Partner" would mean a person that holds an interest directly or indirectly in a partnership or other flow-through entity.

"Corporate partner" would mean a partner, other than a unitary business group, that is subject to tax under Chapter 11, including a partner that has unrelated business activity.

"Direct partner" means a partner that holds an interest directly in a partnership or other flow-through entity.

"Indirect partner" would mean a partner in a partnership or flow-through entity that itself holds an interest directly, or through another indirect partner, in a partnership or other flow-through entity".

"Exempt partner" would mean a partner that is exempt from taxation under this act and does not have unrelated business activity.

"Resident partner" would mean an individual, estate, or trust that is a resident for the relevant tax year.

"Nonresident partner" would mean an individual, estate, or trust partner that is not a resident partner.

"Tiered partner" would mean any partner that is a partnership or other flow-through entity.

"Flow-through entity" would mean an entity that for the applicable tax year is treated as an S corporation under the IRC, 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. The term would not include an entity disregarded under Section 699. (Generally, a person that is a disregarded entity for Federal income tax purposes is classified as a disregarded entity for Michigan income tax purposes.)

"Administrative adjustment request" would mean an administrative adjustment request filed by a partnership under the IRC.

"Federal adjustments report" would include methods or forms required by the Department for use by a taxpayer to report final Federal adjustments, including an amended tax return or information return.

"Federal partnership representative" would mean the person the partnership designates for the reviewed year as the partnership's representative, or the person the IRS has appointed to act as the Federal partnership representative, pursuant to the IRC.

"Final determination date" would mean the following:

-- Except as provided below, if the Federal adjustment arises from an IRS audit or other action by the IRS, the final determination date is the first day on which no Federal adjustments arising from that audit remain to be finally determined, whether by IRS decision with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted; for agreements required to be signed by the IRS and the taxpayer, the final determination date is the date on which the last party signed the agreement.
-- For Federal adjustments arising from an IRS audit or other action by the IRS, if the taxpayer is a member of a unitary business group and required to file a combined return, the term means the first day on which no related Federal adjustments arising from that audit remain to be finally determined for the entire unitary business group.
-- If the Federal adjustment results from filing an amended Federal return, a Federal refund claim, or an administrative adjustment request or if the Federal adjustment is reported on an amended Federal return or other similar report, the term means the day on which the amended return, refund claim, administrative adjustment request, or other similar report was filed.

"Final Federal adjustment" would mean a Federal adjustment after the final determination date for that Federal adjustment has passed.

"Reviewed year" would mean the tax year of a partnership that is subject to a partnership level audit from which Federal adjustment arises.

Partnership & Partnership Level Audits

Under proposed Chapter 18, except for adjustments required to be reported for Federal purposes by taking those adjustments into account in the partnership return for the year of adjustment, partnerships and partners would have to report final Federal adjustments arising from a partnership level audit or an administrative adjustment request, and would have to make payments as required.

With respect to an action required or permitted to be taken and any other proceeding or action permitted under Chapter 18 or the revenue Act, the State partnership representative for the reviewed year would have the sole authority to act on behalf of the partnership and the partnership's direct partners and indirect partners would be bound by those actions. The representative for the reviewed year would be the partnership's Federal partnership representative unless the partnership designated another person as its State representative. The Department could establish reasonable qualifications and procedures for designating a person, other than the Federal representative, to be the State representative.

Final Federal Adjustments

Except for final Federal adjustments subject to a properly made election as described below, final Federal adjustments would have to be reported as follows:

-- Within 90 days after the final determination date, the partnership would have to do all of the following: a) file a completed Federal adjustments report, including information as required by the Department; b) report to each of its direct partners for the reviewed year their distributive share of the final Federal adjustments including information as required by the Department; c) submit a payment on behalf of any nonresident partner previously included on a composite return for the reviewed year for the additional amount of tax that would have been due had the final Federal adjustment been reported correctly.
-- If the increase in the amount of tax due that resulted from the partnership level audit were $25 or more, within 180 days after the final determination date, each direct partner for that reviewed year that was a corporate partner, resident partner, or nonresident partner that was not included in the payment on behalf of a nonresident partner would have to file a Federal

adjustments report reporting that partner's share of the adjustments reported and pay any additional amount of tax due as if the adjustments had been properly reported, plus any penalty and interests as provided under the revenue Act.

If the Department determines that the taxpayer has overpaid the tax imposed by the Income Tax Act, a credit or refund of the overpayment would have to be issued immediately.

Chapter 18 Elections

The bill would allow a partnership that was audited to elect to report any changes at the partnership level rather than the level of individual partners and that the partnership consent to any necessary enforcement actions under the revenue Act. An audited partnership that made the election as specified in the bill would be subject to the laws related to reporting, assessment, payment, and collection of tax calculated under the Income Tax Act and the Revenue Act and, within 90 days after the final determination date, would have to file a completed Federal adjustments report and notify the Department that it was making the election.

An audited partnership that made an election, within 180 days after the final determination date, would have to exclude from final Federal adjustments the distributive share of those adjustments attributed to direct exempt partners not subject to the tax under the Income Tax Act and would have to pay an amount equal to the sum of the following, along with any penalty and interest instead of taxes owed by its direct and indirect partners:

-- For the distributive shares of the remaining final Federal adjustments that were attributed to direct corporate partners, determine the amount allocated or apportioned to the State and multiply that share amount by the tax rate imposed for the reviewed year.
-- For the distributive shares of the remaining final Federal adjustments that were attributed to direct tiered partners, as follows: a) the distributive shares that were attributed to indirect corporate partners and that were allocated or apportioned to the State under Part 2 and multiply that amount by the tax rate imposed under Section 623 (6.0%) for the reviewed year; b) the distributive shares that were attributed to indirect resident or nonresident partners and that were allocated or apportioned to the State under Part 1 and multiply that amount by the tax rate under Section 51 (4.25%) for the reviewed year; and c) for the remaining distributive shares of the final Federal adjustments that were not attributed as specified above, determine the amount allocated or apportioned to the State under Part 2 and multiply that amount by the tax rate imposed under Section 623 for the reviewed year.
-- For the distributive shares of the remaining final Federal adjustments that were attributed to direct partners subject to tax under Part 1, determine the amount of shares that were allocated and apportioned to the State and multiply that share amount by the tax rate imposed under Section 51 for the reviewed year.

In determining the amount of the tax described above, if reasonably identified by the audited partnership, final Federal adjustments could not include the distributive share of the final Federal adjustments attributed to any direct or indirect corporate partner that was unitary with the audited partnership for apportionment purposes.

In accordance with procedures adopted by the Department, an audited partnership or tiered partner could submit an application to the Department, in a form and manner it prescribed, for an alternative reporting and payment method within the time allowed for an election. If the application were approved, an audited partnership or tiered partner would have to enter into an agreement with the Department to use an alternative reporting and payment method, including applicable time requirements or any other provision, if the audited partnership or tiered partner demonstrated that the requested method would reasonably provide for the reporting and payments of taxes, penalties, and interest due.

An election to report at the partnership level, or through alternative reporting, would be irrevocable unless the Department, in its discretion, determined otherwise. If properly reported and paid by

the audited partnership or tiered partner, amounts paid under an election would be considered paid instead of taxes owed by its direct and indirect partners, to the extent applicable, on the same final Federal adjustments. The direct partners or indirect partners could not take a deduction or credit under the Act against this amount or claim a refund of the amount. These provisions would not preclude a direct resident partner from claiming a credit against taxes paid to the State under the Income Tax Act, any amounts paid by the audited partnership or tiered partner on the resident partner's behalf to another state or local tax jurisdiction. If a partnership or tiered partner failed to make a timely report or payment as required, the Department could assess direct partners or indirect partners for taxes owed as determined based on the best information available.

Penalties & Advance Payments

If a taxpayer filed a Federal adjustments report or an amended return as required and within the time period specified in the bill, the Department could not assess additional tax, interest, and penalties arising from final Federal adjustments after the limitations period specified in revenue Act expired. If a taxpayer failed to file the Federal adjustments report within the time period specified or the taxpayer filed a report that omitted adjustments or understated the correct amount of tax owed, the Department could assess additional tax, interest, and penalties arising from those adjustments if the Department issued a notice of assessment to the taxpayer within six years after the final determination date.

A taxpayer that expected to owe additional tax as a result of a pending partnership level audit could make payments, as prescribed by the Department, before the due date of the Federal adjustments report. The Department would have to credit any payments against any tax liability ultimately found to be due under the report and any payments made would limit the accrual of further statutory interest on that amount.

Except for final Federal adjustments required to be reported for Federal purposes under the IRC, a taxpayer could file a claim for a refund or credit of the overpayment of the tax arising from Federal adjustments made by the IRS before the statute of limitations expired. For a taxpayer that was a partnership, any claim for a refund or credit would have to be made within two years of the final determination date of the Federal adjustment.

The time periods provided in the bill could be extended as provided under either of the following:

-- Automatically, upon written notice to the Department, by 60 days for an audited partnership or tiered partner that had 10,000 or more direct partners.
-- By written agreement between the taxpayer and the Department.

Promulgation of Rules

The Department could promulgate rules to implement the bill and could establish procedures and interim time periods for the reports and payments required by tiered partners and their partners and for making elections. To the extent practicable, the Department would have to establish rules and regulations that conformed as closely as possible to the Federal rules and procedures.

Amended Returns

A taxpayer generally must file an amended return with the Department of Treasury showing any final alteration in, or modification of, the taxpayer's Federal income tax return that affects the taxpayer's taxable income or tax base and of any similarly related recomputation of tax or determination of deficiency under the Internal Revenue Code. The amended return must be filed within 120 days after the final alteration, modification, recomputation, or determination of deficiency. Under the bill, the amended return instead would have to be filed within 180 days after the final determination date. Also, the amended return provisions would not apply to the reporting of a final Federal adjustment arising from a partnership level audit or an administrative adjustment required to be reported under Chapter 18.

For tax years that began on and after January 1, 2018, a partnership that was not subject to Chapter 18, but had determined that the partner's share of income, deductions, and credits previously reported to its partners and included in a filed return required adjustment, could, 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.

MCL 206.325 et al.

**BACKGROUND**

The Bipartisan Budget Act of 2015 was signed into law in November 2015. In relevant part, the law replaced the auditing and collection procedures for partnerships under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the electing large partnership rules with the centralized partnership audit regime. This regime, also referred to as BBA, took effect for tax years beginning January 2018.

Partnerships that file returns for tax years starting January 2018 must follow rules under the BBA. Partnerships under the BBA must follow certain filing requirements, including the designation of a partnership representative or electing out of the system (if allowed) on a timely filed return. Under the BBA, the IRS assesses and collects understatements of tax (i.e., an imputed underpayment (IU)) at the partnership level. Partnerships may request to modify the IU and may elect to push out the adjustments underlying the IU instead of paying it.

**ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

**Supporting Argument**

The BBA is a significant improvement over the system enacted under TERFA; it makes the partnership audit regime easier to administer from the IRS's prospective and it is easier to comply with from the taxpayer's prospective. Nevertheless, State law changes are necessary given the parallel structure of Michigan's income tax system with Federal law. The bill is based on model law work conducted by the Multistate Tax Commission, an intergovernmental state tax agency established by the Multistate Tax Compact that works "on behalf of states and taxpayers to facilitate the equitable and efficient administration of state tax laws that apply to multistate and multinational enterprises".[1] The bill would adequately address the changes made to Federal auditing procedures for partnerships, would provide clear guidance for the reporting Federal audit adjustments to the Department of Treasury, and would offer uniformity for taxpayers.

Legislative Analyst: Jeff Mann

**FISCAL IMPACT**

The bill would have a negative fiscal impact on the Department of Treasury, a negligible fiscal impact on State revenue, and no fiscal impact on local units of government. The Department of Treasury would experience initial costs to create new tax filing forms, information technology costs, and costs for the staff training. These costs could be greater than current appropriations. After implementation, the bill likely would not have significant ongoing costs or savings for processing Federal adjustments for partnerships. Savings from a reduction in forms needed to adjust individual tax returns involved in partnerships likely would be spent on processing the joint adjustment forms.

[1] "About Us", Multistate Tax Commission, mtc.gov/The-Commission/About-Us. Retrieved 4-20-22.

It is unlikely that there would be an impact on State revenue beyond possible rounding differences from filling adjustments jointly as a partnership instead of filling individuals tax return adjustments.

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