

# SENATE BILL NO. 248

March 17, 2021, 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 and section 687 as added by 2011 PA 38 and section 701 as amended by 2011 PA 311, and by adding chapter 18.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**       Sec. 325. (1) A taxpayer required to file a return under this  
**2** part may be required to furnish a true and correct copy of any tax  
**3** return or portion of any tax return and supporting schedules that

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 ~~120-180~~ days after the final ~~alteration, modification,~~  
15 ~~recomputation, or determination of deficiency.~~ **determination date.**  
16 If the department finds upon all the facts that an additional tax  
17 under this part is owing, the taxpayer shall immediately pay the  
18 additional tax. If the department finds that the taxpayer has  
19 overpaid the tax imposed by this part, a credit or refund of the  
20 overpayment shall immediately be made as provided in section 30 of  
21 1941 PA 122, MCL 205.30. **This subsection does not apply to the**  
22 **reporting of a final federal adjustment arising from a partnership**  
23 **level audit or an administrative adjustment request required to be**  
24 **reported under 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. Any refund issued to the  
4 partnership under this subsection is in lieu of any overpayment of  
5 taxes that may be claimed by the partners.

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

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

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

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

1 the process set forth in chapter 18. Any refund issued to the  
 2 partnership under this subsection is in lieu of any overpayment of  
 3 taxes that may be claimed by the partners.

4 (4) A taxpayer that expects to owe additional tax as a result  
 5 of a pending federal audit may make payments, in a form and manner  
 6 as prescribed by the department, prior to the final determination  
 7 date. The department shall credit any payments made under this  
 8 subsection against any tax liability due on that taxpayer's amended  
 9 return filed as a result of the federal audit. Payments made under  
 10 this subsection limit the accrual of any further statutory interest  
 11 on the amount due. If the department finds that the taxpayer has  
 12 overpaid the tax due on the amended return, a refund of the  
 13 overpayment shall immediately be made as provided in section 30 of  
 14 1941 PA 122, MCL 205.30.

15 (5) As used in this section, "administrative adjustment  
 16 request", "final determination date", "final federal adjustment",  
 17 and "partnership level audit" mean those terms as defined in  
 18 section 721.

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

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

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

24 (c) "Eligible production company" means that term as defined  
 25 under section 455 of the Michigan business tax act, 2007 PA 36, MCL  
 26 208.1455.

27 (d) "Flow-through entity" means an entity that for the  
 28 applicable tax year is treated as an S corporation under section  
 29 1362(a) of the internal revenue code, a general partnership, a

1 limited partnership, a limited liability partnership, or a limited  
2 liability company, that for the applicable tax year is not taxed as  
3 a corporation for federal income tax purposes. Flow-through entity  
4 does not include any entity disregarded under section 699.

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

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

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

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

18 (i) "Race meeting licensee" and "track licensee" mean a person  
19 to whom a race meeting license or track license is issued pursuant  
20 to section 8 of the horse racing law of 1995, 1995 PA 279, MCL  
21 431.308.

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

## 25 **CHAPTER 18**

### 26 **Sec. 721. As used in this chapter:**

27 (a) "Administrative adjustment request" means an  
28 administrative adjustment request filed by a partnership under  
29 section 6227 of the internal revenue code.

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

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

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

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

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

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

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

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

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

12           (ii) For federal adjustments arising from an IRS audit or other  
13 action by the IRS, if the taxpayer is a member of a unitary  
14 business group and required to file a combined return under section  
15 691, the final determination date means the first day on which no  
16 related federal adjustments arising from that audit or other action  
17 remain to be finally determined, as described in subparagraph (i),  
18 for the entire unitary business group.

19           (iii) If the federal adjustment results from filing an amended  
20 federal return, a federal refund claim, or an administrative  
21 adjustment request or if the federal adjustment is reported on an  
22 amended federal return or other similar report filed under section  
23 6225(c) of the internal revenue code, the final determination date  
24 means the day on which the amended return, refund claim,  
25 administrative adjustment request, or other similar report was  
26 filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 605.

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

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

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

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

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

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

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

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

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

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

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

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

29           (4) An audited partnership that makes an election under this

1 subsection is subject to the laws related to reporting, assessment,  
2 payment, and collection of the tax calculated under this act and  
3 under 1941 PA 122, MCL 205.1 to 205.31, and shall do all of the  
4 following:

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

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

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

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

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

29 (B) The distributive shares that are attributed to indirect

1 resident or nonresident partners and that are allocated or  
2 apportioned to this state under part 1 and multiply that amount by  
3 the tax rate imposed under section 51 for the reviewed year.

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

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

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

20 (6) 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 (7). 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           (7) In accordance with procedures adopted by the department,  
2 an audited partnership or tiered partner may submit an application  
3 to the department, in a form and manner as prescribed by the  
4 department, for an alternative reporting and payment method within  
5 the time allowed for an election under subsection (3) or (4), as  
6 applicable. If the application is approved by the department, an  
7 audited partnership or tiered partner shall enter into an agreement  
8 with the department to utilize an alternative reporting and payment  
9 method, including applicable time requirements or any other  
10 provision of this section, if the audited partnership or tiered  
11 partner demonstrates that the requested method will reasonably  
12 provide for the reporting and payments of taxes, penalties, and  
13 interest due under this section.

14           (8) An election made under subsection (4) or (7) 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 (7) 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 (9) 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 (10) 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 (11) Except for adjustments required to be reported for  
24 federal purposes by taking those adjustments into account in the  
25 partnership return for the year of adjustment, a taxpayer may file  
26 a claim for a refund or credit of the overpayment of the tax  
27 arising from final federal adjustments before the expiration of the  
28 statute of limitations established under section 27a of 1941 PA  
29 122, MCL 205.27a. For a taxpayer that is a partnership, any claim

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

3 (12) 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 (13) 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.