Act No. 148
Public Acts of 2022
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STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022

Introduced by Senator Runestad

ENROLLED SENATE BILL No. 248

AN ACT to amend 1967 PA 281, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement by lien and otherwise of taxes on or measured by net income and on certain commercial, business, and financial activities; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal acts and parts of acts," 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:

Sec. 325. (1) A taxpayer required to file a return under this part may be required to furnish a true and correct copy of any tax return or portion of any tax return and supporting schedules that the taxpayer has filed under the provisions of the internal revenue code.

(2) Except as provided in subsection (3), a taxpayer shall file an amended return with the department showing any final alteration in, or modification of, the taxpayer's federal income tax return that affects the taxpayer's taxable income under this part and of any similarly related recomputation of tax or determination of deficiency under the internal revenue code. If an increase in taxable income results from a federal audit that increases the taxpayer's federal income tax by less than $500.00, the requirement under this subsection to file an amended return does not apply but the department may assess an increase in tax resulting from the audit. The amended return must be filed within 180 days after the final determination date. If the department finds upon all the facts that an additional tax under this part is owing, the taxpayer shall immediately pay the additional tax. If the department finds that the taxpayer has overpaid the tax imposed by this part, a credit or refund of the overpayment must immediately be made as provided in section 30 of 1941 PA 122, MCL 205.30. This subsection does not apply to the reporting of a final federal adjustment arising from a partnership level audit or an administrative adjustment request required to be reported under chapter 18.

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

(4) As used in this section:

(a) "Administrative adjustment request", "final federal adjustment", and "partnership level audit" mean those terms as defined in section 721.

(b) "Final determination date" means the following:

(*i*) Except as provided in subparagraphs (*ii*) and (*iii*), 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 or other action 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.

(*ii*) 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 under section 691, the final determination date means the first day on which no related federal adjustments arising from that audit or other action remain to be finally determined, as described in subparagraph (*i*), for the entire unitary business group.

(*iii*) 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 filed under section 6225(c) of the internal revenue code, the final determination date means the day on which the amended return, refund claim, administrative adjustment request, or other similar report was filed.

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

(2) Except as provided in subsection (3), a taxpayer shall file an amended return with the department showing any alteration in or modification of a federal income tax return that affects its tax base under this part. The amended return must be filed within 180 days after the final determination date. This subsection does not apply to the reporting of a final federal adjustment arising from a partnership level audit or an administrative adjustment request required to be reported under chapter 18.

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

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

(5) As used in this section:

(a) "Administrative adjustment request", "final federal adjustment", and "partnership level audit" mean those terms as defined in section 721.

(b) "Final determination date" means that term as defined in section 325.

Sec. 701. As used in this chapter:

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

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

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

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

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

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

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

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

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

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

CHAPTER 18

Sec. 721. As used in this chapter:

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

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

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

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

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

(f) "Federal adjustment" means a change to an item or amount determined under the internal revenue code that is used by a taxpayer to compute tax liability under this 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 this act and is negative to the extent that it decreases the tax due under this act.

(g) "Federal adjustments report" includes 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.

(h) "Federal partnership representative" means 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 section 6223 of the internal revenue code.

(i) "Final determination date" means that term as defined in section 325.

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

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

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

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

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

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

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

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

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

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

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

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

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

(*ii*) A corporation or unitary business group subject to a tax imposed by part 2. As used in this subparagraph, "corporation" means that term as defined in section 605.

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

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

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

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

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

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

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

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

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

(*ii*) 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.

(*iii*) 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 adjustments been reported properly as required.

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) An election made under subsection (4) or (7) is irrevocable, unless the department, in its discretion, determines otherwise. If properly reported and paid by the audited partnership or tiered partner, the amount determined under subsection (4)(b) or alternatively under subsection (7) is considered paid in lieu 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 may not take any deduction or credit under this act for this amount or claim a refund of the amount. This subsection does not preclude a direct resident partner from claiming a credit under section 255 against taxes paid to this state under this act, for 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 fails to timely make any report or payment as required under this section, the department may assess direct partners or indirect partners for taxes owed as determined based on the best information available.

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

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

(11) 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, a taxpayer may file a claim for a refund or credit of

the overpayment of the tax arising from final federal adjustments before the expiration of the statute of limitations established under section 27a of 1941 PA 122, MCL 205.27a. For a taxpayer that is a partnership, any claim for a refund or credit under this section must be made within 2 years of the final determination date of the federal adjustment.

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

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

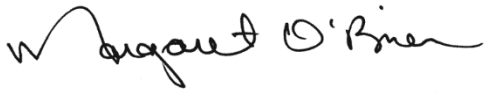
(b) By written agreement between the taxpayer and the department.

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

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

Enacting section 1. This amendatory act is retroactive and applies to all tax years that begin on and after January 1, 2018.

This act is ordered to take immediate effect.



Secretary of the Senate

Clerk of the House of Representatives

Approved_____

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Governor