

House Bill 849

By: Representatives Peake of the 141st, Knight of the 130th, Wilkerson of the 38th, Mosby of the 83rd, and Carson of the 46th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
2 income tax, so as to provide for reporting of federal partnership adjustments; to provide for
3 Georgia partnership and pass-through entity adjustments and assessments and related
4 appeals; to revise the provisions relating to the reporting of other federal adjustments; to
5 provide an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income tax, is
9 amended by adding a new paragraph to subsection (b) of Code Section 48-7-21, relating to
10 taxation of corporations, as follows:

11 "(17) Georgia taxable net income shall be adjusted as provided in Code Section 48-7-53."

12 **SECTION 2.**

13 Said chapter is further amended by adding a new paragraph to subsection (b) of Code
14 Section 48-7-27, relating to computation of taxable net income, as follows:

15 "(14) Georgia taxable net income shall be adjusted as provided in Code Section 48-7-53."

16 **SECTION 3.**

17 Said chapter is further amended by revising Code Section 48-7-53, relating to partnership
18 returns, as follows:

19 "48-7-53.

20 (a) As used in this Code section, the term:

21 (1) 'Administrative adjustment request' means the same as provided in Code Section
22 6227 of the Internal Revenue Code of 1986 and the regulations thereunder.

23 (2) 'Audited partnership' means a partnership subject to a final federal adjustment
24 resulting from a partnership level audit.

- 25 (3) 'Corporate partner' means a C corporation partner that is subject to tax pursuant to
26 Code Section 48-7-21.
- 27 (4) 'Direct partner' means a person that holds an interest directly in an audited
28 partnership.
- 29 (5) 'Exempt partner' means a partner that is exempt from taxation pursuant to
30 paragraph (1) of subsection (a) of Code Section 48-7-25.
- 31 (6) 'Federal adjustment' means a change to an item or amount required to be determined
32 under the Internal Revenue Code of 1986 and the regulations thereunder that is used by
33 a partnership to compute state tax owed for the reviewed year where such change results
34 from a partnership level audit. A federal adjustment is positive to the extent that it
35 increases Georgia taxable net income as determined under this title and is negative to the
36 extent that it decreases Georgia taxable net income as determined under this title.
- 37 (7) 'Federal adjustments report' means an amended Georgia income tax return that arises
38 directly or indirectly from a partnership level audit and for an audited partnership and
39 tiered partner, identifies all partners that hold an interest directly in such audited
40 partnership or tiered partner and provides the effect of the final federal adjustments on
41 such partner's Georgia taxable net income. For the audited partnership, the federal
42 adjustments report shall also contain information reasonably necessary to provide the
43 commissioner with an understanding of all adjustments to the audited partnership's
44 federal taxable income and the amount of such adjustments allocated to each of its
45 partners. For the audited partnership, a copy of the report received from the Internal
46 Revenue Service shall be sufficient if it provides such information. For all tiered
47 partners, the federal adjustments report shall also contain information reasonably
48 necessary to provide the commissioner with an understanding of all adjustments to a
49 tiered partner's federal taxable income and the amount of such adjustments allocated to
50 each of its partners.
- 51 (8) 'Federal partnership representative' means the person the partnership designates for
52 the taxable year as the partnership's representative, or the person the Internal Revenue
53 Service has appointed to act as the federal partnership representative, pursuant to
54 Section 6223(a) of the Internal Revenue Code of 1986 and the regulations thereunder.
- 55 (9) 'Fiduciary partner' means a fiduciary that is subject to tax pursuant to Code
56 Sections 48-7-20 and 48-7-22.
- 57 (10) 'Final determination date' means the following:
- 58 (A) If the federal adjustment arises from a partnership level audit, the final
59 determination date is the first day on which no federal adjustments arising from that
60 audit remain to be finally determined, whether by agreement, or, if appealed or
61 contested, by a final decision with respect to which all rights of appeal have been

62 waived or exhausted. For agreements required to be signed by the Internal Revenue
63 Service and the audited partnership, the final determination date is the date on which
64 the last party signed the agreement; or

65 (B) If the adjustment results from filing an administrative adjustment request, the final
66 determination date means the day on which the administrative adjustment request was
67 filed.

68 (11) 'Final federal adjustment' means a federal adjustment after the final determination
69 date for that federal adjustment has passed.

70 (12) 'Georgia income tax' means the tax imposed by Code Sections 48-7-20, 48-7-21,
71 and 48-7-25, and as provided in subsection (c) of this Code section.

72 (13) 'Indirect partner' means a partner in a partnership or pass-through entity where such
73 partnership or pass-through entity itself holds an interest directly, or through another
74 indirect partner, in a partnership or pass-through entity.

75 (14) 'Individual partner' means a partner who is a natural person that is subject to tax
76 pursuant to Code Section 48-7-20.

77 (15) 'Internal Revenue Service' means the Internal Revenue Service of the United States
78 Department of the Treasury.

79 (16) 'Nonresident partner' means a partner that is not a resident as defined in this
80 subsection.

81 (17) 'Partner' means a person that holds an interest, directly or indirectly, in a partnership
82 or pass-through entity.

83 (18) 'Partnership' means an entity subject to taxation under Subchapter K of the Internal
84 Revenue Code of 1986 and the regulations thereunder and includes, but is not limited to,
85 a syndicate, group, pool, joint venture, or other unincorporated organization through or
86 by means of which any business, financial operation, or venture is carried on and which
87 is not, within the meaning of this chapter, a trust, estate, or corporation.

88 (19) 'Partnership level audit' means an examination or other review by the Internal
89 Revenue Service for taxable years beginning on or after January 1, 2018, at the
90 partnership level pursuant to the Internal Revenue Code of 1986 and the regulations
91 thereunder either of which results in final federal adjustments initiated and made by the
92 Internal Revenue Service.

93 (20) 'Pass-through entity' means an entity, other than a partnership, that is not subject to
94 tax under Code Section 48-7-21 for C corporations but excluding an exempt partner.

95 (21) 'Reallocation adjustment' means a final federal adjustment that changes the shares
96 of items of partnership income, gain, loss, expense, or credit allocated to a partner that
97 holds an interest directly in a partnership or pass-through entity. A positive reallocation
98 adjustment means a reallocation adjustment that would increase Georgia taxable net

99 income for such partners, and a negative reallocation adjustment means a reallocation
 100 adjustment that would decrease Georgia taxable net income for such partners.

101 (22) 'Resident partner' means for an individual or fiduciary partner, the same as provided
 102 in Code Section 48-7-1 and for all other partners means a partner whose headquarters or
 103 principal place of business is located inside this state.

104 (23) 'Reviewed year' means the taxable year of a partnership that is subject to a
 105 partnership level audit from which final federal adjustments arise.

106 (24) 'State partnership audit' means an examination by the commissioner at the
 107 partnership or pass-through entity level which results in adjustments to partnership or
 108 pass-through entity related items or reallocations of income, expenses, gains, losses,
 109 credits, and other attributes among such partners for the reviewed year.

110 (25) 'Tiered partner' means any partner that is a partnership or pass-through entity.

111 (26) 'Unrelated business income' means the income which is defined in Section 512 of
 112 the Internal Revenue Code of 1986 and the regulations thereunder.

113 (27) 'Withholding partner' means a partner in a partnership for whom the partnership was
 114 required to withhold tax pursuant to Code Section 48-7-129 for the reviewed year.

115 (b) Every partnership, including, but not limited to, a foreign partnership, the individual
 116 members of which are subject to taxation under this chapter, shall make a return for each
 117 taxable year. The return shall state specifically the items of the partnership's gross income
 118 and the deductions allowed by this chapter, shall include the names and addresses of the
 119 individuals who would be entitled to share in the net income of the partnership if the net
 120 income were distributed, and shall specify the amount of the distributive share of each
 121 individual. The return shall be sworn to by any one of the partners. ~~The term 'partnership'~~
 122 ~~includes, but is not limited to, a syndicate, group, pool, joint venture, or other~~
 123 ~~unincorporated organization through or by means of which any business, financial~~
 124 ~~operation, or venture is carried on and which is not, within the meaning of this chapter, a~~
 125 ~~trust, estate, or corporation. The term 'partner' includes, but is not limited to, a member in~~
 126 ~~such syndicate, group, pool, joint venture, or organization.~~

127 (c) Partnerships and their direct partners and indirect partners shall report final federal
 128 adjustments, as provided in this subsection, and not as provided in subsection (e) of Code
 129 Section 48-7-82.

130 (1) State Partnership Representative.

131 (A) With respect to an action required or permitted to be taken by a partnership or
 132 pass-through entity under this Code section and a proceeding under Code Section
 133 48-2-59 with respect to final federal adjustments arising from a partnership level audit,
 134 the state partnership representative for the reviewed year shall have the sole authority

135 to act on behalf of the partnership or pass-through entity, and its direct partners and
136 indirect partners shall be bound by those actions.

137 (B) The state partnership representative for the reviewed year for a partnership is a
138 partnership's federal partnership representative unless the partnership designates in
139 writing another person as its state partnership representative as provided in
140 subparagraph (C) of this paragraph. The state partnership representative for the
141 reviewed year for a pass-through entity is the person designated in subparagraph (C)
142 of this paragraph.

143 (C) The commissioner may establish reasonable qualifications for a person to be the
144 state partnership representative. If a partnership desires to designate a person other than
145 their federal partnership representative, they shall designate such person by attaching
146 a statement to the return filed pursuant to this chapter. A pass-through entity shall
147 designate a person as their state partnership representative by attaching a statement to
148 the return filed pursuant to this chapter. A partnership or pass-through entity shall be
149 allowed to change such designation by notifying the commissioner at the time the
150 change occurs.

151 (2) Reporting and payment requirements for audited partnerships subject to final federal
152 adjustments and their partners.

153 (A) Unless an audited partnership makes the election in paragraph (3) of this
154 subsection, then, for all final federal adjustments, the audited partnership shall no later
155 than 90 days after the final determination date of the audited partnership:

156 (i) File a completed federal adjustments report;
157 (ii) Notify each of its direct partners of their distributive share of the adjustments; and
158 (iii) File an amended composite return under Code Section 48-7-129 if one was
159 originally filed and for withholding partners, file an amended withholding report
160 under Code Section 48-7-129, and pay the additional amount due under this title that
161 would have been due had the final federal adjustments been reported properly as
162 required.

163 (B) Unless an audited partnership paid an amount on behalf of its direct partners
164 pursuant to paragraph (3) of this subsection, all direct partners of the audited
165 partnership shall no later than 180 days after the final determination date of the audited
166 partnership:

167 (i) File a completed federal adjustments report reporting their distributive share of the
168 adjustments reported to them under subparagraph (A) of this paragraph;
169 (ii) If the direct partner is a tiered partner, notify all of the partners, that hold an
170 interest directly in such tiered partner, of their distributive share of the adjustments;

171 (iii) If the direct partner is a tiered partner and subject to Code Section 48-7-129, file
172 an amended composite return under Code Section 48-7-129 if such return was
173 originally filed and if applicable for withholding partners file an amended withholding
174 report under Code Section 48-7-129 if one was originally required to be filed; and
175 (iv) Pay any additional amount due under this title, including any penalty and interest
176 that would have been due had the final federal adjustments been reported properly as
177 required and with respect to a composite return, less any withholding tax paid or
178 withheld for such withholding partners pursuant to subparagraph (A) of this
179 paragraph.

180 (C) Unless a partnership or tiered partner paid an amount on behalf of its partners
181 pursuant to paragraph (3) of this subsection, each indirect partner, shall:

182 (i) Within 90 days after the time for filing and furnishing statements to tiered partners
183 and their partners as established by Section 6226 of the Internal Revenue Code of
184 1986 and the regulations thereunder, file a completed federal adjustments report;

185 (ii) If the indirect partner is a tiered partner, within 90 days after the time for filing
186 and furnishing statements to tiered partners and their partners as established by
187 Section 6226 of the Internal Revenue Code of 1986 and the regulations thereunder but
188 within sufficient time for all indirect partners to also complete the requirements of this
189 subsection, notify all of the partners, that hold an interest directly in such tiered
190 partner, of their distributive share of the adjustments;

191 (iii) Within 90 days after the time for filing and furnishing statements to tiered
192 partners and their partners as established by Section 6226 of the Internal Revenue
193 Code of 1986 and the regulations thereunder, if the indirect partner is a tiered partner
194 and subject to Code Section 48-7-129, file an amended composite return under Code
195 Section 48-7-129 if such return was originally filed and if applicable for withholding
196 partners file an amended withholding report under Code Section 48-7-129 if one was
197 originally required to be filed; and

198 (iv) Within 90 days after the time for filing and furnishing statements to tiered
199 partners and their partners as established by Section 6226 of the Internal Revenue
200 Code of 1986 and the regulations thereunder, pay any additional amount due under
201 this title, including any penalty and interest that would have been due had the final
202 federal adjustments been reported properly as required and with respect to a
203 composite return, less any withholding tax paid or withheld for such withholding
204 partners pursuant to subparagraph (A) or (B) of this paragraph.

205 (3) Election for partnership or tiered partners to pay. If an audited partnership, or a
206 tiered partner that would receive an amended schedule K-1 under paragraph (2) of this
207 subsection, makes an election under this paragraph, it shall:

208 (A) File a completed federal adjustments report, notify the commissioner that it is
 209 making the election under this paragraph, and pay an amount as provided in this
 210 paragraph, including any penalty and interest, on behalf of its partners within one of the
 211 following time periods:

212 (i) For the audited partnership, no later than 90 days after the final determination date
 213 of the audited partnership;

214 (ii) For a direct tiered partner, no later than 180 days after the final determination
 215 date of the audited partnership; or

216 (iii) For an indirect tiered partner, within 90 days after the time for filing and
 217 furnishing statements to tiered partners and their partners as established by Section
 218 6226 of the Internal Revenue Code of 1986 and the regulations thereunder;

219 (B) Exclude from final federal adjustments and any positive reallocation adjustments
 220 the distributive share of such adjustments made to an exempt partner, that holds an
 221 interest directly in the audited partnership if the audited partnership is making the
 222 election or that holds an interest directly in the tiered partner if the tiered partner is
 223 making the election, that is not unrelated business income;

224 (C) Determine the total distributive share of all final federal adjustments and positive
 225 reallocation adjustments as modified by this title and apportion and allocate such
 226 adjustments as provided in Code Section 48-7-31 for such electing partnership or such
 227 electing tiered partner and determine the total distributive share of such amounts that
 228 are allocated to all corporate partners, all tiered partners, all exempt partners and that
 229 is unrelated business income, all nonresident individual partners, and all nonresident
 230 fiduciary partners;

231 (D) Determine the total distributive share of all final federal adjustments and positive
 232 reallocation adjustments as modified by this title, but without the allocation and
 233 apportionment of such adjustments as provided by Code Section 48-7-31, that are
 234 allocated to all other partners, including but not limited to resident individual partners
 235 and resident fiduciary partners; and

236 (E) Total the amount computed pursuant to subparagraphs (C) and (D) of this
 237 paragraph and multiply by 6 percent.

238 (4) Effect of election by partnership or tiered partner and payment of amount due.

239 (A) The election made pursuant to paragraph (3) of this subsection is irrevocable.

240 (B) If properly reported and paid by the audited partnership or tiered partner, the
 241 amount determined in paragraph (3) of this subsection shall be treated as paid on behalf
 242 of such person's partners on the same final federal adjustments; provided, however, that
 243 no partner may take any deduction or credit for these amounts, claim a refund of these
 244 amounts, or include such amounts on such partner's return in any manner.

245 (C) Nothing in this subsection shall preclude a resident partner who is a natural person
 246 or a fiduciary and that holds an interest directly in the audited partnership if the audited
 247 partnership is making the election or that holds an interest directly in the tiered partner
 248 if the tiered partner is making the election, from claiming a credit against taxes paid to
 249 this state pursuant to Code Section 48-7-28 for any amounts paid by the audited
 250 partnership or tiered partner on such resident partner's behalf to another state or local
 251 tax jurisdiction provided the requirements of Code Section 48-7-28 are met.

252 (5) Failure of audited partnership or tiered partner to report or pay. Nothing in this
 253 subsection is intended to prevent the commissioner from assessing direct partners and
 254 indirect partners for taxes they owe in the event that an audited partnership or tiered
 255 partner fails to timely make any report or payment required by this subsection for any
 256 reason.

257 (6) Assessments of additional Georgia income tax, interest, and penalties arising from
 258 final federal adjustments. The commissioner will assess additional Georgia income tax,
 259 interest, and penalties arising from final federal adjustments as if it is a tax imposed by
 260 this chapter unless a different treatment is provided by this subsection. Since partnership
 261 adjustments are determined at the audited partnership level, any assessment issued to
 262 partners shall not be appealable by the partner. Any penalties or interest imposed on the
 263 partnership or its partners shall be as provided and at the rates in this title except that
 264 penalties and interest imposed on the audited partnership or tiered partners shall be from
 265 the day after the due date of the reviewed year return without extension. Such assessment
 266 shall be issued by the following dates:

267 (A) Timely reported final federal adjustments. If a partnership, tiered partner, or other
 268 partner files with the commissioner a federal adjustments report as required within the
 269 period specified in this subsection reporting all final federal adjustments, the
 270 commissioner may assess any taxes, including on-behalf taxes, interest, and penalties
 271 arising from those final federal adjustments if the commissioner issues a notice of
 272 assessment to the partnership, tiered partner, or partner, on or before the later of:

273 (i) The expiration of the limitations period specified in Code Section 48-7-82; or
 274 (ii) The expiration of the one-year period following the date of filing with the
 275 commissioner of the federal adjustments report by such person.

276 (B) Untimely reported final federal adjustments. If the partnership, tiered partner, or
 277 other partner fails to file the federal adjustments report within the period specified in
 278 this subsection, or the federal adjustments report filed by the partnership, tiered partner,
 279 or other partner omits final federal adjustments or understates the correct amount of
 280 Georgia income tax owed, the commissioner may assess any taxes, including on-behalf
 281 taxes, interest, and penalties arising from the final federal adjustments, if it issues a

282 notice of assessment to the partnership, tiered partner, or other partner on or before the
 283 later of:

284 (i) The expiration of the limitations period specified in Code Section 48-7-82;

285 (ii) The expiration of the one-year period following the date the federal adjustments
 286 report was filed with commissioner by such person; or

287 (iii) Absent fraud, the expiration of the five-year period following the date on which
 288 the Internal Revenue Service notifies the commissioner of the federal adjustments.

289 (7) Claims for refund of Georgia income tax arising from final federal adjustments.

290 Notwithstanding the reporting requirement contained in this subsection and except as
 291 otherwise prohibited by this title, a partnership, tiered partner, or other partner, as the case
 292 may be, may file a claim for refund of Georgia income tax arising directly or indirectly
 293 from final federal adjustments on or before the later of:

294 (A) The expiration of the last day for filing a claim for refund of Georgia income tax
 295 pursuant to Code Section 48-2-35 for such person; or

296 (B) One year from the date the federal adjustments report was required to be filed by
 297 this subsection for such person.

298 (8) Scope of adjustments and extensions of time.

299 (A) Unless otherwise agreed in writing by the partnership, tiered partner, or other
 300 partner and the commissioner, any adjustments by the commissioner after the expiration
 301 of the time provided in Code Section 48-7-82 or by the partnership, tiered partners, or
 302 other partners made after the expiration of the time provided in Code Section 48-2-35,
 303 are limited to changes to the partnership's, tiered partner's, or other partner's Georgia
 304 income tax liability arising directly or indirectly from final federal adjustments.

305 (B) Where, before the expiration of the time prescribed in this subsection for the
 306 assessment of Georgia income tax, both the commissioner and the person subject to
 307 assessment have consented in writing to its assessment after such time, the tax may be
 308 assessed at any time prior to the expiration of the agreed upon period. The period so
 309 agreed upon may be extended by subsequent agreements in writing made before the
 310 expiration of the previously agreed upon period and the commissioner is authorized in
 311 any such agreement to extend similarly the period within which a claim for refund may
 312 be filed; provided, however, that the time periods provided in this subsection may be
 313 extended automatically by 60 days for an audited partnership which has 10,000 or more
 314 direct partners or a tiered partner which has 10,000 or more partners that hold an
 315 interest directly in such tiered partner, provided that such audited partnership or tiered
 316 partner attaches a statement to its federal adjustments report specifying that it has
 317 elected such automatic extension.

318 (9) Any income subtracted from federal taxable income for the adjustment year pursuant
319 to Section 6225 of the Internal Revenue Code of 1986 and the regulations thereunder
320 shall be added to the partnership's, tiered partner's, or other partner's Georgia taxable net
321 income for the adjustment year.

322 (d) For taxable years beginning on or after January 1, 2017, any adjustment to a
323 partnership's items of income, gain, loss, expense, or credit or an adjustment to such items
324 allocated to a partner that holds an interest in a partnership for the reviewed year by the
325 commissioner as a result of a state partnership audit shall be determined at the partnership
326 level in the same manner as provided by subsection (a) of Section 6221 of the Internal
327 Revenue Code of 1986 and the regulations thereunder unless a different treatment is
328 specifically provided in this title. If the commissioner and the partnership agree, the
329 provisions of this subsection may be applied to taxable years beginning before January 1,
330 2017. The provisions of Sections 6222, 6223, and 6227 of the Internal Revenue Code of
331 1986 and the regulations thereunder shall also apply in the same manner as provided in
332 such sections unless a different treatment is specifically provided in this chapter. For
333 purposes of applying such sections, due account shall be made for differences in federal
334 and Georgia terminology such as substitution of 'Secretary' with 'Commissioner' and other
335 obvious differences. The adjustment provided by subsection (a) of Section 6221 of the
336 Internal Revenue Code of 1986 shall be determined as provided in such section but shall
337 be based on the Georgia taxable net income or other tax attributes of the partnership as
338 determined pursuant to this chapter for the reviewed year. The commissioner shall issue
339 a notice of adjustment to the partnership. Such notice shall be treated as an assessment for
340 purposes of Code Sections 48-2-59 and 48-7-82, and, as such, the notice shall be
341 appealable pursuant to Code Section 48-2-59 and shall be issued within the time period
342 provided by Code Section 48-7-82. Once the adjustments to partnership-related items or
343 reallocations of income, expenses, gains, losses, credits, and other attributes among such
344 partners for the reviewed year are finally determined, the partnership and any direct
345 partners or indirect partners shall then be subject to the provisions of subsection (c) of this
346 Code section in the same manner as if the state partnership audit were a partnership level
347 audit.

348 (e) For purposes of this chapter, any adjustment to a pass-through entity's items of income,
349 gain, loss, expense, or credit or an adjustment to such items allocated to a partner that holds
350 an interest in a pass-through entity for the reviewed year by the commissioner shall be
351 determined in the same manner as provided in subsection (d) of this Code section.

352 (f) An administrative adjustment request filed by the partnership with the Internal Revenue
353 Service or the commissioner shall be treated in the reviewed year in the same manner as
354 provided by subsection (c) of this Code section, except that:

355 (1) The period of limitations on claiming refunds for the partnership and partners shall
 356 be as provided by this title, notwithstanding subsection (c) of this Code section; and
 357 (2) The period of limitations on making adjustments and assessments for the partnership
 358 and partners shall be on or before the later of:
 359 (A) The expiration of the limitations period specified in Code Section 48-7-82; or
 360 (B) The expiration of the one-year period following the date of the filing of the
 361 administrative adjustment request by the partnership or the amended Georgia income
 362 tax return by the partners, as the case may be.
 363 (g) The commissioner shall be authorized to promulgate any rules and regulations
 364 necessary to implement and administer the provisions of this Code section."

365 SECTION 4.

366 Said chapter is further amended by revising subsection (e) of Code Section 48-7-82, relating
 367 to change or correction of net income, as follows:

368 "(e)(1) Except as provided in Code Section 48-7-53, when ~~When~~ a taxpayer's amount of
 369 net income for any year under this chapter as returned to the United States Department
 370 of the Treasury is changed or corrected by the commissioner of internal revenue or other
 371 officer of the United States of competent authority, the taxpayer, within 180 days after
 372 the final determination date of the changed or corrected net income, shall make a return
 373 to the commissioner of the changed or corrected income, and the commissioner shall
 374 make assessment or the taxpayer shall claim a refund based on the change or correction
 375 within one year from the date the return required by this paragraph is filed. If the
 376 taxpayer does not make the return reflecting the changed or corrected net income and the
 377 commissioner receives from the United States government or one of its agents a report
 378 reflecting the changed or corrected net income, the commissioner shall make assessment
 379 for taxes due based on the change or correction within five years from the date the report
 380 from the United States government or its agent is actually received. If he or she chooses,
 381 the commissioner shall have the authority to establish a de minimis amount upon which
 382 a taxpayer shall not be required to comply with this subsection. For purposes of this
 383 subsection the final determination date shall be determined as follows:

384 (A) Except as provided in subparagraph (B) of this paragraph, the final determination
 385 date is the first day on which no changes or corrections for a particular audit remain to
 386 be finally determined, whether by agreement, or, if appealed or contested, by a final
 387 decision with respect to which all rights of appeal have been waived or exhausted. For
 388 agreements required to be signed by the commissioner of internal revenue and the
 389 taxpayer, the final determination date is the date on which the last party signed the
 390 agreement; or

391 (B) If the taxpayer filed as a member of a combined or consolidated group, the final
392 determination date is the first day on which no related changes or corrections for a
393 particular audit remain to be finally determined for the entire group.

394 (2) In the event the taxpayer fails to notify the commissioner of the final determination
395 of his or her United States income taxes, the commissioner shall proceed to determine,
396 upon evidence that the commissioner has brought to his or her attention or that he or she
397 otherwise acquires, the corrected income of the taxpayer for the fiscal or calendar year.
398 If additional tax is determined to be due, the tax shall be assessed and collected. If it is
399 determined that there has been an overpayment of tax for the year, the taxpayer, by his
400 or her failure to notify the commissioner as required in paragraph (1) of this subsection,
401 shall forfeit his or her right to any refund due by reason of the change or correction. A
402 taxpayer who so fails to notify the commissioner, however, shall be entitled to equitable
403 recoupment of 90 percent of any overpayment so determined against any additional tax
404 liability so determined, the remaining 10 percent of the overpayment being totally
405 forfeited as a penalty for failure to make a return as required by paragraph (1) of this
406 subsection."

407 **SECTION 5.**

408 This Act shall become effective upon its approval by the Governor or upon its becoming law
409 without such approval.

410 **SECTION 6.**

411 All laws and parts of laws in conflict with this Act are repealed.