To: **Partnership Work Group**

From: **MTC Staff**

Re: **Comparison of MTC Issue List to Proposed Montana Legislation**

Date: **January 30, 2017**

This document makes a general comparison of the MTC Partnership Work Group Issue List (as of January 30, 2017) with proposed Montana legislation (House Bill No. 47), attached.

There are two things that should be noted about this comparison:

1. This legislation is enacted in the context of existing state statutes, and if the legislation does not address the issue, but it is addressed elsewhere, then we noted but did not do a detailed evaluation of that existing law. This will likely be the same for other states, where certain procedural issues are generally set out in different provisions of the tax code.

2. A number of issues not addressed by the legislation can, and presumably will, be addressed in regulations.

Summary

In general, the legislation seeks to simplify procedures that may be used by the IRS, primarily in two ways. First, the legislation allows the state to look to the adjustments found by the IRS, which may make up the assessment of an imputed underpayment or be pushed-out to the partners by the IRS. By looking to the specific adjustments that form the basis for the federal assessment, the state has some flexibility in adopting procedures for how those adjustments will be treated at the state level (for example, the use of apportionment where appropriate). Second, the legislation looks to the reviewed year, not to the year of adjustment, requiring that the reviewed year returns (partnership or partner) be amended.

Comparison

Federal Audit & Adjustment Process	Effect on States and Related Requirements (Summary of How Montana Legislation Treats the Issue)
	Election Out
Under Sec. 6221(b), certain smaller, simpler partnerships will be allowed to elect out annually—and so the partners must be audited and assessed individually.	Federal adjustments may be made to individual or corporate partners (of partnerships that can and do elect out) or to partnerships that cannot or do not elect out. This issue list assumes that states currently have rules for addressing audit adjustments made by the IRS to individual and corporate partners.
See MCA 15-30-2619 which would apply where the partnership has opted out.	
	Partners Who Take Inconsistent Positions
Under Sec. 6222, partners must generally report partnership items consistently with the partnership's reporting of those items. If not, the IRS may assess any tax resulting from inconsistent treatment to the partner in a summary fashion as a math error. Again, see MCA 15-30-2619.	Again, this issue list assumes that the states currently provide rules for what individual or corporate partners must do if they are assessed additional tax by the IRS.
	Role of the Partnership Representative
Under Sec. 6223, the partnership must designate a "partnership representative" (or the IRS will designate someone for the partnership) who will make decisions in the event of any audit, and those decisions will be binding on the partnership and all the partners. At the federal level, these decisions may include whether the reviewed year partners will be required to file amended returns under Sec. 6225(c)(2), whether to contest any proposed or final audit adjustment, or whether to push out the final audit adjustment to the reviewed year partners under Sec. 6226, etc.	Issues: 1. Will the state recognize the role of the partnership representative with respect to state tax effects of the federal adjustment which may include: a) Notifying the state of the federal adjustment, b) Reporting any related state attributes (e.g., apportionment information), c) Fling any required returns for the partners or the partnership, d) Handling any related issues (such as any appeal of the state assessment). 2. The state may also want to consider whether a nonresident or out-of-state partnership representative will be allowed to act on behalf of a resident partner in a case where the partnership itself is not doing business in the state. 3. Will the state allow the partnership to designate a partnership representative different than the PR designated for federal purposes?

The Montana legislation does not specifically address the role of the federal partnership representative. The legislation does provide for having the partnership file necessary returns (whether the partnership pays the related state liability or the partners do) and it requires the partnership to determine the Montana share of any federal adjustment that increases tax due. In general, the state would look to the designated PR identified by the partnership on the federal return (signator) or partnership agreement. Currently, anyone with a valid Power of Attorney can work with the state on the items listed in this section.

The following are examples of things that might require some action on the part of the partnership representative:

- Responding to the state or addressing questions as to the determination of the state share of a partnership adjustment—including both the apportionment or allocation of items as well as any state level adjustments (subtractions or add-backs).
- Re-computation of state tax attributes including credits and NOLs.
- Certifying that information provided is consistent with federal information.
- Handling any dispute with respect to the assessment of tax at the partnership level including procedural disputes having to do with assessment periods, offsets, treatment of penalties and interest, etc.
- Responding to the state with information to confirm whether partners have taken a consistent position with any adjustments, assuming the state adjustments are made at the partner level.
- Responding to any requests for federal information generally.

This is not to say that states must follow the federal approach to the partnership representative's role, but if states do not have their own rules for who acts on behalf of the partnership, they may want to consider adopting rules for these and other circumstances.

Effect of an Adjustment that Does Not Result in an Imputed Underpayment

Under Sec. 6225(a)(2), if the audit adjustment does not result in an imputed underpayment (that is, if tax was determined to be overpaid), that adjustment is taken into account by the partnership in the adjustment year as either a reduction in income, an increase in loss, or an addition to a credit. It's not clear what form of documentation the IRS will issue to the partnership to recognize this treatment for the partnership and the partners.

Issues:

1. Will the state recognize this kind of adjustment as being properly recognized in the adjustment year (rather than the reviewed year).

   a) If so, this may require a mechanism to ensure that there is no "double-counting" of tax reductions.

   b) If not, there will be differences in partnership attributes and partner basis for state and federal tax purposes. Will the partnership in that case need to provide state level information returns showing the effect of the adjustment on the state taxes for the partners in the adjustment year? (Will any apportionment of the adjustment be made in the adjustment year in that case?)

2. Will the state's existing RAR statute cover this situation (see below)?

Under the Montana legislation, if the adjustments do not result in a tax liability at the state level, then the partnership must report information on the adjustments to partners and to Montana for the reviewed year and the partners must file amended returns for the reviewed year.

Calculation of the State-Level Imputed Underpayment of Partnership Tax

Under Sec. 6225(b), the IRS will compute an "imputed underpayment" which may ultimately be paid by the partnership (if not completely reduced under Sec. 6225(c), see below, or if no "push out election" is made). This amount is computed as follows: (1) take any 1065 (partnership) items and net the increases and decreases in revenue, expense, gain and loss, (2) take only the positive amounts of reallocations among the partners, and then (3) apply the highest federal income tax rate to that amount to determine the "imputed underpayment." So, for example, if the audit finds that revenues should be increased by $3 million, expenses should also be increased by $1 million, and $2 million of gain should be reallocated from certain partners to other partners, then the amount of the imputed underpayment will = $4 million ($3 million - $1 million) + $2 million) X Tax Rate. If the partnership takes no other action in response, this will be the partnership's tax liability.

Issues:

1. Assuming the state will also need to calculate an amount that may have to be paid by the partnership, the issues for the state will include:

a) The manner in which a multistate partnership will be allowed to apportion the imputed underpayment for state purposes, [Montana legislation: apportionment would be done under the state's apportionment rules (UDITPA), see Sec. 1(4)]

b) Does the answer to a) depend on whether the state was the residence of affected partner(s) who therefore would be required to report 100% of the partnership income and take a credit for taxes paid to other states, [Montana legislation: It does not appear that the answer to 1. a) is affected by whether the partners are residents. Where a partnership has activity in multiple states and must pay at the partnership level, the adjusted state tax would reflect only State source income whether the partners are residents or nonresidents. Under this method, the state is receiving tax on the appropriate amount of state income, the partner is not required to amend and there is no need to track or report a credit for tax paid to another state.]

c) If apportioned, what year's apportionment factors will be used to apportion the imputed underpayment? Can a state constitutionally require the use of adjustment year factors rather than reviewed year factors? [Montana Legislation: The legislation is not explicit, but does require the partnership to file a return for the reviewed year, so that, presumably, the apportionment required would be based on reviewed year factors, see Sec. 2]

d) Will the state allow the partnership to use the apportionment factor in the originally-filed return as opposed to re-computing the factor, for purposes of administrative ease? [Montana Legislation: The legislation is not explicit and therefore if the adjustment affected an apportionment factor, that factor would presumably have to be adjusted by the partnership on information filed with the state, see Sec. 2.]

	2. What tax rate will apply at the state level, especially if there are state income tax-exempt entities (which may not coincide with the federal definition or are subject to a non-income based tax regime such as insurance companies or banks) or partners with lower state tax rates? [Montana Legislation: The highest state rate, see Sec. 3(1)(a).]
Partnership Response to Proposed Audit Adjustment	
Under Sec. 6225(c), the imputed underpayment, calculated as described above, will become the proposed audit adjustment, which will then trigger a 270-day period in which the partnership can present information to the IRS to lower the final audit adjustment amount. There are three types of information contemplated: (1) amended returns filed by reviewed year partners (with proof of payment) (commonly known as the "pay-up election"), (2) information on (lower) tax rates or tax-exempt status of the partners, and (3) other information that might affect the final audit adjustment amount.	States currently provide requirements for taxpayers who file amended federal returns to file amended state returns. Presumably, the amended returns filed for this purpose would also trigger a state-filing requirement. Other Issues: 1. Will the state require any other information from the partnership in a case where the partners file amended state returns in response to a proposed federal audit adjustment? [Montana Legislation: It does not appear that where the partners file amended returns, so that the amounts amended are not included in the adjustments which result in an assessment of an imputed underpayment, that the state would require any additional information from the partnership, see Sec. 2. This is something that would have to be addressed in a regulation, but it would need to be state specific. It may be that the state would need to see a breakdown of partners not included in the imputed underpayment as a part of the amended partnership return. Any partners that amend their own returns fall under the existing RAR statute..] 2. If a partnership elected to file a composite return, will partners be allowed to file separate amended returns or will the partnership have to file an amended composite return? If the latter, will the partners who are included be relieved of filing individual amended returns? [Montana Legislation: It does not appear the legislation contemplates the filing of amended composite returns. The composite tax issue is addressed in MCA, 15-30-3312(4)(b), which states that the partnership is responsible for any adjustments to a composite tax return. Regulations could clarify that this still applies.] 3. Also, if the state calculates the imputed underpayment for state purposes in a manner similar to the federal calculation (see above) then will the state also allow the partnership to show that the tax rates of certain partners are lower than the highest applicable state rate or that certain partners are exempt from state income tax? [Montana Legislation: It does not appear that the legislation contemplates reduction of the state rate applicable to a partnership assessment. This would have to be addressed in regulation as part of the state

	"modification". Likely it would require an amended partner state return or proof of tax exempt status.] 4. Similar to 3, will the state consider other information that might affect the final audit adjustment amount at the state level? What should that information be? [Montana Legislation: It does not appear the legislation contemplates consideration of other information but this is an issue that could be dealt with by regulation.]
Reduction in Proposed Audit Adjustment (Imputed Underpayment)	
Under Sec. 6225(c), the IRS will allow a reduction in the proposed audit adjustment (imputed underpayment) where, among other things (see above) the reviewed year partners file amended returns taking the adjustments into account and make a related payment of the tax. It does not appear that the statute requires all partners to do so, however, so it is possible that the imputed underpayment would only be reduced partially—for those partners who have filed amended returns and paid the additional tax.	Issues: 1. Will the state conform to the federal pay-up election and allow the partnership to reduce its state tax liability related to the federal adjustments for reviewed year partners who file amended returns/pay tax? [Montana Legislation: It appears the legislation will follow the federal treatment in that it will require the partnership to file and pay only where the imputed underpayment is assessed (that is, after modifications under Sec. 6225 have been made), see Sec. 2. The particulars of this are likely to be best handled in regulations (in the way that the IRS is also having to do).] 2. Will the state require that the reduction be made for state purposes only for the partners who file amended state returns, as well as federal returns? [Montana Legislation: It does not appear that the treatment of the partnership's liability for the Montana share of liability from the imputed underpayment is contingent on whether partners actually file amended state returns, but this is an issue that can be addressed by regulation.] 3. Similarly, can a partnership reduce its federal imputed underpayment by presenting information to the IRS to reduce the final audit adjustment amount, but choose not to do so for a particular state, thereby causing the partnership to remain liable for the full amount of the state tax? [Montana Legislation: This is not addressed specifically, but the state could potentially allow this by regulation. See also Issue No. 5 below.] 4. Will the state allow a state level pay-up election if the partnership did not make a federal pay-up election, so that certain partners will file a state amended return and pay the state tax but will not file a federal amended return? If this is allowed, will it be allowed where all partners do not file state amended returns and pay the state tax? [Montana Legislation: This is not addressed specifically, but the state could potentially allow this by regulation and could vary the requirements. See also Issue No. 5 below.] 5. Will the state require the partnership and, if applicable, the partners, to file information returns disclosing the federal proposed audit adjustment (including the

	underlying issues) and demonstrate that the amended returns filed for state purposes take these issues into account? [Montana Legislation: If there is a federal assessment of an imputed underpayment against the partnership or if it elects to push-out the liability, then the partnership must file information returns, see Sec.2. The state may provide for state-level modification through regulation under Section 3, which would presumably include the filing of necessary information returns. Under existing Montana law, if the legislation did not apply to the "pay-up" election, the partners would be required to amend under MCA 15-30-2619. This may be true where other states have broad requirements to file amended returns.] 6. Will the state require some showing that the IRS has allowed the amended returns in order to reduce the state-level proposed audit adjustment? [Montana Legislation: The legislation does not require this, and does not appear to be necessary under the approach taken, but might also be handled through regulations.] 7. Assuming state law requires the partners to file a state amended return if they also file a federal amended return, in what way will the partnership need to prove that a state amended return was indeed filed? [Montana Legislation: It does not appear that the legislation puts any additional requirements on the partnership to prove amended state returns for partners were filed, and again, it appears unnecessary under the approach taken] 8. Will partnerships be allowed to file composite returns for this purpose? [Montana Legislation: Not specifically addressed, but could be addressed by regulations under existing state law. 9. If some amount of the federal proposed audit adjustment remains, will the state accept the federal reductions in that amount as the basis for any remaining partnership assessment? [Montana Legislation: If an imputed underpayment were partially reduced at the federal level, the state will still need to figure out the state underpayment per its own procedures, but then could figure a reduction based on what was reported on an amended partner state return.]
"Push-Out" of the Final Partnership Audit Adjustment	
The IRS will ultimately provide the partnership with a final audit adjustment (after taking into account any reductions under Sec. 6225). Then, under Sec. 6226, the partnership may elect to "push out" the final audit adjustment to	NOTE: There is some question about how exactly the IRS will allow push-out of the partnership audit adjustments—whether as a portion of the imputed underpayment (that is, a share of the tax computed at the partnership level) or as adjustments that each partner would recognize and be taxed on separately.

partners who were partners in the reviewed year. If it does so, the partnership is relieved of liability but must provide the partners with information on the adjustments (and related partnership information that may be relevant) so that the taxes owed can be properly calculated. The adjustments pushed out may affect the taxes those partners owed in the reviewed year and subsequent years. However, the amount of the additional tax due for each partner for the reviewed and subsequent years will then be reported and paid with the partner's adjustment year taxes. No amended returns (for the reviewed year(s) or interim year(s)) are required.	Issues: Assuming it is the latter (which is likely): 1. Will the state allow the partnership to push out the state tax amount related to the federal audit adjustments if the partnership makes a federal push-out election? [Montana Legislation: Yes. See Sec. 1(1) and Sec. 3(2). See also specific answers below:] a) If so, will the state require the partnership to provide additional state-related information (such as apportionment information) so that the state tax owed by the partners can be properly calculated? [Yes. Sec. 3(2). b) Will the relevant apportionment information be that related to the reviewed year (and subsequent years) in order to avoid constitutional concerns? [It appears so.] c) How will the state handle the partner who was a state resident in the reviewed year but is now a nonresident or no longer a partner? And vice versa? What jurisdictional issues are presented? [Montana legislation looks back to the reviewed year, so there is no conflict between adjustment year status and reviewed year status.] 2. If the state normally requires withholding for nonresident partners, will the state require the partnership to withhold on nonresident partners for their tax liabilities? (see question above) [Montana Legislation: It is not an up-front withholding that would be required, rather Section 3(2)(d) provides that the partnership will be assessed if a partner fails to file an amended return and pay tax due.] 3. If the state normally allows or requires a composite return for nonresident partners to be filed by the partnership, will it allow an amended composite return, or a current year composite return that includes reviewed year adjustments, in this situation? What jurisdictional issues are presented? [Montana Legislation: Yes, amended composite returns will be accepted per MCA 15-30-3312(4)(b)] 4. Will states permit partnerships to file withholding or composite returns for <u>resident</u> partners or will they each be required to file amended returns? If they are allowed to be included, how will their liability be computed? [Montana Legislation: The legislation doesn't address this, however, under existing law the state could address this through regulation, either to allow it or allow an entity level assessment/payment.] 5. Can the composite return include corporate partners who were not included on the originally filed composite return? If they are allowed to be included, how will their liability be computed? [Montana Legislation: See Issue No.

	4 above.] 6. If the partnership elects to push out the federal adjustments, will the state allow it to pay the state-related tax at the partnership level, without pushing that liability out to the partners? In other words, if a federal push-out election is made, will the state allow the partnership to opt-out of that election for a particular state and remain liable for the tax? [The Montana legislation does not specifically permit this, but Montana may allow an election to pay tax on the adjustments at the partnership level (when the push-out election was made for federal purposes.] 7. Conversely, if a partnership does not make a federal push-out election, may it nevertheless do so at the state level? Under what conditions? [The Montana legislation does not allow this.] 8. Will the states allow a partnership that is itself a partner of the audited partnership to push-out the state adjustment to lower-tier partners if that is elected for federal tax purposes under Sec. 6226(b)? [Montana Legislation: It appears so, since if the partnership is able to make the federal "election for alternative adjustment" then the partnership would be required to push-out for state purposes as well.]
Treatment of Partnership Payment of Tax	
If a partnership does not elect to push out the final audit adjustments to the reviewed year partners, then it will have to pay any amount of unreduced imputed underpayment (see above) remaining in the year of the final adjustment. At the federal level, this will also have the effect of relieving partners from any liability for the same adjustments.	Issues: 1. Most states do not have the statutory authority to impose liability at the partnership level, so the state may need to enact new law allowing for this. [Montana Legislation: Addresses this issue.] 2. If the state allows the partnership to pay the state tax related to the federal adjustments, how will the state provide for apportionment of that liability when there are resident partners in the state (who would otherwise pay tax on 100% of their partnership income and claim a credit for other state taxes paid)? [Montana Legislation: Would require apportionment at the partnership level and would use state apportionment rules (UDITPA), see Sec. 1(4), "Montana share of the adjustments."] 3. If the partnership pays the state taxes in other states due to the audit adjustments, will resident partners be entitled to take any credit for taxes paid by the partnership against their own taxes and how will this be computed and shown? [Montana Legislation: By virtue of the procedure, if the partnership also pays tax in this state, this would not be an issue. If a resident's share of adjustments are paid at the partnership level, it would be calculated inclusive of any apportionment factor to

	ensure the state tax is calculated only on the state's share and eliminates the problem of having to figure out credit for taxes paid to another state. Other Montana statutes provide for when a resident partner pays its own share of adjustments in this state, but partnership pays in other states, partner would be allowed a credit. The limitation on such a credit could be addressed by regulation.] 4. If the partnership apportions the tax, would it use the reviewed year apportionment factors rather than those of the adjustment year (in which the tax would be reported and paid for federal purposes). Would using adjustment year factors be constitutionally permissible?)? [Montana Legislation: The legislation is not explicit, but it appears that use of reviewed year factors is anticipated. See Sec. 1(4) and Sec. 3(1)(a).] 5. If the partnership pays some or all of the federal adjustment, will that tax payment be treated by the state as a deductible or a creditable tax for the partners?)? [Montana Legislation: It appears this issue is not explicitly addressed in the legislation but other Montana statutes may allow for this as an itemized deduction.]
Statutes of Limitation, Penalties & Interest	
The federal changes include specific provisions for calculating penalties and interest on the tax ultimately due and also provide a specific statute of limitations.	Issues: 1. Does the state have the authority to impose penalties and interest under this system depending upon whether: a) The partners filed amended returns, b) The partnership pushes out the final adjustments to the partners, or c) The partnership pays the unreduced amount of the final imputed underpayment? 2. Does the state have the authority to assess under existing statutes of limitation, either against the partnership or the reviewed year partners, where the final audit adjustment is issued to the partnership and the tax due is required to be paid in the year of adjustment? For example, does the existing RAR statute allow the state to assess tax against a partnership as a result of a federal audit adjustment? 3. Is the state's authority under its existing RAR statute limited to a review/adjustment of the items adjusted by the IRS in the RAR?
The Montana legislation provides for the imposition of penalties and interest on the partnership. See Sec. 3(1)(c). Presumably interest and penalties will follow from the fact that the amounts reported by the partnership to the partners, under the election for alterative adjustment, are "considered a change or correction requiring each partner to file an amended Montana return . . .." The statutes of limitation are also specifically addressed in Sections 6 and 7 of the legislation.	

General Administrative and Other Provisions	
The federal changes provide for how partnerships may appeal or challenge the federal adjustments and the effect that any challenge may have on the process.	Issues: 1. Will the partnership/partners have to separately appeal or challenge the state-related taxes if the federal adjustment is appealed? [Montana Legislation: No. The timing for reporting to the state begins with the final partnership assessment after all federal appeal procedures are exhausted or foregone.] 2. If so, does the existing appeal process contemplate such an appeal? 3. If any adjustments relate to reallocated amounts between partners, which would reduce certain partners' taxes (assuming the partnership elects to push out the adjustments), how will the state provide for refunds of state-related taxes? [Montana Legislation: This would be the same as under any other circumstance where an amended partnership issued return is received by a partner.]
Other Apportionment Issues	
An adjustment at the federal level may have an effect on state level apportionment. For example, if the federal adjustment determined that a gain was improperly deferred and should have been recognized in the reviewed year, this might also affect the receipts factor (since the receipts from the transaction might then be included in the receipts factor in that same year, rather than in a later year).	Issue: Within the confines of the existing RAR statute, or under the normal statute of limitations, can a state make a change to apportionment factors where the federal adjustment might have some effect on apportionment? [Montana Legislation: This is addressed in the state's general audit authority.]

Attachment

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HOUSE BILL NO. 47

INTRODUCED BY Z. BROWN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS FOR PARTNERSHIPS WITH AUDIT ADJUSTMENTS MADE BY THE INTERNAL REVENUE SERVICE; PROVIDING REPORTING REQUIREMENTS AND PAYMENT DEADLINES; AMENDING SECTIONS 15-30-2606 AND 15-31-509, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Election for alternative adjustment" refers to the election described in section 6226 of the Internal Revenue Code, 26 U.S.C. 6226.

(2) "Final determination" means a determination that the appeal rights of the internal revenue service and of the partnership and its partners have expired or have been exhausted relative to the tax year.

(3) "Imputed underpayment" has the meaning provided in section 6225 of the Internal Revenue Code, 26 U.S.C. 6225.

(4) "Montana share of the adjustments" means the adjustments determined in [section 2], subject to the allocation and apportionment provisions of 15-1-601 and Title 15, chapter 31, part 3.

(5) "Reviewed year" has the meaning provided in section 6225(d)(1) of the Internal Revenue Code, 26 U.S.C. 6225(d)(1).

NEW SECTION. **Section 2. Partnership returns with federal adjustments.** If a partnership return is adjusted by the internal revenue service and assessed an imputed underpayment or if the partnership makes an election for alternative adjustment, the partnership shall file a return with the department for the reviewed year that shows the federal adjustments and any of the correlative adjustments required under 15-30-2110.

NEW SECTION. **Section 3. Partnership returns with federal adjustments -- filing requirements.**

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(1) If the adjustment described in [section 2] results in a net increase in Montana taxable income and if subsection (2) of this section does not apply:

(a) the tax must be imposed on the Montana share of the adjustments at the highest tax rate contained in 15-30-2103;

(b) the partnership must pay tax on the adjustments within 90 days after the final determination; and

(c) penalties and interest must be computed as provided in 15-1-216 from the original due date of the partnership return.

(2) If the adjustment described in [section 2] results in a net reduction in Montana taxable income or a net increase in Montana taxable income of a partnership that makes the election for alternative adjustment, the partnership must furnish, within 90 days after the final determination, to each partner and to the department on a form prescribed by the department a statement of the partner's share of the adjustments as required in [section 2].

(3) The amount reported to each partner is an adjustment to the partner's share of partnership taxable income. The adjustment is considered a change or correction requiring each partner to file an amended Montana return within 150 days after the final determination.

(4) A partnership that fails to provide statements to its partners within the time period provided for in subsection (2) must pay the tax provided in subsection (1).

(5) The partnership must pay the tax as provided in subsection (1) on the share of adjustments for any partner that fails to amend a Montana income tax return within the time period provided for in subsection (3).

NEW SECTION. **Section 4. Department to issue deficiency assessment.** If a partnership fails to file a return required under [section 2], if the department determines the partnership's return is in any essential respect incorrect, or if the partnership does not pay the tax required under [section 3] in full, the department may issue a deficiency assessment in accordance with 15-30-2605.

NEW SECTION. **Section 5. Erroneous reporting of adjustments.** (1) If a partnership's erroneous report of adjustments filed pursuant to [section 2] results in an understatement of the distribution of Montana taxable income to the partners under [section 3(2)], the partnership shall pay the tax on the understatement by applying the calculation in [section 3(1)] to the unreported adjustments.

(2) If a partnership's erroneous report of adjustments filed pursuant to [section 2] results in an

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overstatement of Montana taxable income, the adjustment must be handled as follows:

(a) If the original adjustments were passed through to the partners pursuant to [section 3(2)], the revised adjustment must be passed through to the partners. The partnership shall amend the return as described in [section 2] and amend the statements provided to the partners under [section 3(2)].

(b) If the tax on the adjustments was originally paid by the partnership pursuant to [section 3(1)], the partnership shall amend the return filed pursuant to [section 3(1)] to claim any refund. This subsection (2)(b) does not allow a partnership to claim a refund for amounts not actually paid by the partnership.

Section 6. Section 15-30-2606, MCA, is amended to read:

"15-30-2606. Tolling of statute of limitations. The running of the statute of limitations provided for under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619 or [section 3], the statute of limitations does not apply until 3 years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable as gross income and the amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations does not apply for 2 additional years from the time specified in 15-30-2605."

Section 7. Section 15-31-509, MCA, is amended to read:

"15-31-509. Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

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(i) only as long as the suspension of the federal statute of limitation; or

(ii) until 1 year after the federal changes have become final or an amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506 or [section 3], until 3 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.

(3) If a claim for refund or credit is based ~~upon~~ on an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback.

(4) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 15, chapter 30, part 33, and the provisions of Title 15, chapter 30, part 33, apply to [sections 1 through 5].

NEW SECTION. **Section 9. Applicability.** [This act] applies to income tax years beginning after December 31, 2017.

- END -