

**\*\*01/27/17 DRAFT\*\***

**CHECKLIST FOR STATE CONFORMITY LEGISLATION TO  
NEW FEDERAL PARTNERSHIP AUDIT RULES<sup>1</sup>**

<b>Issue</b>	<b>Yes/No</b>	<b>Comments</b>
Does the state currently have a statute or administrative rules for addressing audit adjustments made by the IRS to partners?		
Does the bill amend the state income/franchise tax levy statute to make partnerships subject to the state income/franchise tax on IRS partnership audit adjustments?		
Does the bill contain a comprehensive list of definitional terms that parallel the federal statute or incorporate them by reference?		
Does the bill provide that the state will follow a federal election to opt into the federal partnership audit rules for tax periods ending prior to January 1, 2018?		
Does the bill provide that the state will follow a federal election to opt out?		
Does the bill confirm that the state will accept the taxpayer's designation of a partnership representative (PR)?		
Does the bill allow the partnership to designate a PR who is different from the PR designated for federal income tax purposes (e.g., a state-specific PR)?		
Does the bill confirm that a nonresident or out-of-state PR can act on behalf of a partnership in a case where the partnership itself is not doing business in the state at the time?		
Does the bill impose any additional restrictions or limitations on who can serve as the PR?		
Does the bill specify a process and time period to notify the state if the PR (or state PR) is changed?		

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<sup>1</sup> This checklist was prepared without consideration of the Tax Technical Corrections Act, H.R. 6439/S. 506, or its successor technical corrections legislation.

Issue	Yes/No	Comments
<p>Does the bill recognize a federal audit adjustment that doesn't result in an underpayment as being properly recognized in the adjustment year (rather than the reviewed year)?</p> <p>a) If so, does the bill contain a mechanism to ensure that there is no double-counting of tax reductions?</p> <p>b) If not, does the bill address the potential difference in partnership attributes and partner basis for state and federal tax purposes, i.e., will the partnership 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?)</p> <p>c) Does the bill, or the state's existing RAR statute, address this situation?</p>		
<p>Do the bill's filing and response deadlines parallel the federal rules, either through incorporation by reference or by listing the specific deadlines?</p>		
<p>Does the bill, or existing state law, allow for partnerships to make tax payments on behalf of their partners?</p> <p>a) If so, does the bill provide that partners will be entitled to credit for the tax paid by the partnership?</p> <p>b) If so, does the bill address how the credit will be applied?</p>		
<p>Does the bill address whether a partnership paying the state share of the imputed underpayment does so on an amended reviewed year return, or as an adjustment on the adjustment year return?</p>		
<p>[Reserved]?</p>		

Issue	Yes/No	Comments
<p>Does the bill address the manner in which a multistate partnership will be allowed to apportion the imputed underpayment for state purposes?</p> <p>a) If so, does the apportionment method depend upon 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?</p> <p>b) Does the bill confirm that the reviewed year's apportionment factors will be used to apportion the imputed underpayment?</p> <p>c) Does the bill 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?</p>		
<p>Does the bill address the tax rate that 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?</p>		
<p>If the state calculates the imputed underpayment for state purposes in a manner similar to the federal calculation, does the bill 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 to lower the state imputed underpayment amount?</p>		
<p>Does the bill (or the state's RAR statute) address whether amended federal tax returns filed by reviewed year partners trigger a state amended return filing requirement?</p>		
<p>[Reserved]</p>		
<p>Does the bill contain a filing mechanism for amended returns if a partnership elects to file a composite return, i.e., will the partners be allowed to file separate amended returns or must the partnership file an amended composite return?</p>		

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Does the bill address whether the state will consider other information that might affect the final audit adjustment amount at the state level? If so, is that information identified, or is the state DOR granted regulatory authority in this regard?		
Does the bill conform to the I.R.C. § 6225 pay-up election/deadlines 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?		
With respect to the pay-up election, does the bill require a reduction in state tax liability for the partners who file amended federal as well as state returns and pay the tax and interest?		
Does the bill permit a partnership that reduces its federal imputed underpayment by presenting information to the IRS, to elect not to do so for state tax purposes, thereby causing the partnership to remain liable for the full amount of the state tax?		
Does the bill permit 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 if all partners don't file state amended returns and pay the state tax?		
Does the bill or the current RAR statute 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?		
Does the bill require a showing that the IRS has accepted the amended returns in order to reduce the state-level proposed audit adjustment?		
Does the bill address how the partnership may prove that a state amended return was filed?		
Does the bill allow a partnership to file a special composite return for purposes of the pay-up election?		

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Does the bill address whether the state will accept the full amount of the federal reductions as the basis for any remaining partnership assessment, if some amount of the federal proposed audit adjustment remains unpaid?		
Does the bill 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 I.R.C. § 6227(b)?		
<p>If the IRS allows the push-out of the partnership audit adjustments as adjustments that each partner would recognize and be taxed on separately, does the bill 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?</p> <ul style="list-style-type: none"> <li>a) If so, does the bill 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?</li> <li>b) Does the bill provide that the relevant apportionment information is related to the reviewed year (and subsequent years)?</li> <li>c) How does the bill address a partner who was a state resident in the reviewed year but is now a nonresident or no longer a partner? And vice versa?</li> </ul>		
If the state normally allows or requires withholding for nonresident partners, does the bill require the partnership to withhold on nonresident partners for their adjusted state tax liabilities?		
If the state normally allows or requires a composite return for nonresident partners to be filed by the partnership, does the bill allow an amended composite return, or a current year composite return that includes reviewed year adjustments?		
Does the bill permit a partnership to file a special withholding or composite return for resident partners or will they each be required to file amended returns? If they are allowed to be included in a composite return, does the bill specify how their liability will be computed?		

Issue	Yes/No	Comments
If the bill permits a partnership to file a composite return, does the composite return include or permit corporate partners? What if they were not included on the originally filed composite return?		
If the partnership elects to push out the federal adjustments under I.R.C. § 6226, does the bill allow the partnership to pay the state-related tax, etc. on behalf of the partners, without pushing that liability out to them?		
Conversely, if a partnership does not make a federal push-out election, does the bill permit it to make a state-level push-out election? If so, under what conditions?		
Does the bill contemplate the proposed elections provided in the Tax Technical Corrections Act, H.R. 6439/S. 506, or its successor?		
If the state allows the partnership to pay the state tax related to the federal audit adjustments under the push out method, how does the bill 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)?		
[Reserved]		
<p>If the partnership pays the state taxes in this or other states due to the federal audit adjustments, does the bill clarify that resident partners are entitled to take a credit for income taxes paid by the partnership against their own resident state taxes?</p> <ul style="list-style-type: none"> <li>a) If so, how will this be computed and shown?</li> <li>b) Does the bill allow residents a credit for non-traditional income taxes paid to other states on an imputed underpayment as a result of the IRS audit (e.g., Ohio, Texas, Tennessee, etc.)?</li> </ul>		
In states that have factor presence nexus standards, if an imputed underpayment causes the partnership to have bright line nexus in a state for the first time, does the bill provide for an automatic abatement of penalties for late-filing, etc.?		

Issue	Yes/No	Comments
Does the bill address the “moving partner” circumstance, in which a partner was a resident of the state during the reviewed year, but not in the adjustment year?		
Does the bill address the “moving partnership” circumstance, in which a partnership that was doing business in or otherwise taxable by a state during the reviewed year but was not doing business in or otherwise taxable in that state during the adjustment year or vice versa?		
Does the bill include specific provisions for calculating penalties and interest on the tax ultimately due and also provide a specific statute of limitations?		
Does the bill address whether the partnership/partners must separately appeal or challenge the state-related taxes if the federal adjustment is appealed? If not, does the existing appeal process contemplate such an appeal?		
Does the bill allow the partnership or partners to challenge the state assessment if the federal assessment is not being challenged?		
If any adjustments relate to reallocated amounts between partners, which would reduce certain partners’ taxes (assuming the partnership elects to push out the adjustments), does the bill provide for refunds of parallel state-related taxes?		
Is the date from which the state report must be filed tied to the issuance or occurrence of a “final determination” with respect to the federal RAR?		
Is the effective date of the bill clear? Is it tied to the federal effective date?		
Does the bill grant the state DOR authority to issue interpretive regulations under the state APA?		