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September 19, 2018

Mr. Gregory Mason  
Executive Director  
Multistate Tax Commission  
444 North Capitol Street, NW  
Washington DC 20001-1538

Re: Model Uniform Statute and Regulation for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments (the Model Statute)

Dear Mr. Mason:

This letter is written in support of the Model Statute which we understand was approved by the Multistate Tax Commission (MTC) Executive Committee on September 11, 2018 and will be subject to a public hearing on October 15, 2018.

The Master Limited Partnership Association (MLPA) has worked on the Model Statute over the last two plus years with the MTC Partnership Project Group and the Interested Parties Group which includes Tax Executives Institute, the American Bar Association's State and Local Tax Committee, the Council on State Taxation, the American Institute of CPAs, and the Institute for Professionals in Taxation. Given the publicly traded nature of our MLP members which conduct business throughout the United States, it is imperative for states to adopt a generally consistent response to the United States federal centralized partnership audit regime.

**Background**

Publicly traded partnerships (PTPs), also known as master limited partnerships (MLPs), are limited partnerships, the interests in which (units) are traded each day on the New York, American and NASDAQ exchanges. Under section 7704 of the Internal Revenue Code, PTPs are taxed as partnerships as long as they meet certain statutory requirements. Currently, there are roughly 140 publicly traded partnerships in the country.

Rules added to the federal tax code in 1987 require any partnership that is publicly traded to receive 90 percent of its income from specified sources in order to be treated as a partnership rather than a corporation for income tax purposes. These qualified sources include mineral or natural resource activities such as exploration, production, mining, refining, marketing and transportation (including pipelines), of oil and gas, minerals, geothermal energy and timber, as well as income and gains from real property.

The reason the United States Congress provided for this treatment of PTPs was to stimulate the development and delivery of capital intensive businesses with low or controlled rates of return. Levying a tax directly on a PTP, or their lower-tier entities, defeats the very purpose of the structure and will result in the overpayment of state tax. It is also important to note that investors in PTPs do not receive any additional state liability protection by virtue of investing in these entities.

### **Partnership Audit Concerns**

Publicly traded partnerships each have tens of thousands, and in some cases, more than 100,000 limited partners commonly referred to as unitholders. The size and overall complexity of the PTP structure result in a series of issues that make certain aspects of many proposed responses to the federal centralized partnership audit regime unworkable for PTPs.

In addition to the sheer volume of impacted taxpayers, PTPs are required to treat each publicly traded unit as fungible pursuant to Securities and Exchange trading requirements. As such, the tax treatment, including partnership audit responses, must be consistent for all unitholders in a PTP. Some PTP unitholders, including tax-exempt organizations, may not be taxable in each state on their full share of distributive income. Unitholders may also have their own state activity or state tax attributes, including passive activity losses, which potentially offset income received from a PTP.

Accordingly, it is imperative that state responses to the federal centralized partnership audit regime include the ability for partnerships, including PTPs, to push-out adjustments to their partners. Additionally, to the extent it is determined to be beneficial for both the partnership and the state taxing authority, the ability to come to an agreement on an alternative reporting or payment method is expected to have a significantly positive impact on the efficiency of the partnership audit response process.

The Model Statute appropriately addresses these concerns along with others raised over the last several years. MLPA endorses the Model Statute and encourages state legislatures to utilize the Model Statute in their upcoming 2019 legislative sessions.

Please let us know if we can provide additional information about this issue or be of assistance.

Best,



Lori Ziebart  
Executive Director, MLPA