



TO: Members of the Partnership Work Group and the MTC Uniformity Committee
FROM: MTC Staff
SUBJECT: **DRAFT** - Partnership Work Group Staff Report
DATE: September 14, 2017

NOTE: THIS REPORT IS A DRAFT REPORT, PREPARED BY MTC STAFF FOR REVIEW AND DISCUSSION ONLY. THE INTERESTED PARTIES HAVE NOT YET HAD A CHANCE TO REVIEW AND RESPOND TO THIS REPORT AND IT IS SUBJECT TO REVISION, IF NECESSARY.

On September 5, 2017, partnership work group leader Tracee Abel, MTC staff (Helen Hecht, Lila Disque, and Sheldon Laskin), and representatives of the “interested parties” (ABA, AICPA, TEI, and COST) met to discuss the interested parties’ proposal and possible modifications to that proposal. As a result of the discussion, we agreed that certain issues needed further evaluation. The interested parties are also working on revisions to their proposal that will be presented to the work group for its consideration.

In general, there were things about the proposed IRS regulations that we believe would be useful for the states to understand and MTC staff have offered to provide a more detailed “roadmap” on the federal audit process based on what we now know (or think we know) about how that process will work—including what information is likely to be available at different stages.

Among the other issues that we will be looking further at are:

- Do states need to explicitly amend state partnership law to allow for the authority granted to the partnership representative? The Bipartisan Budget Act essentially “short-circuits” applicable state law as to how partnerships would normally be deemed to act. (State law generally gives that authority to general or managing partners, etc.) But it does not appear that states can depend on that federal statutory authority either to have the federal PR act for the partnership or to have a state-level PR. Is the language in the proposal sufficient?
- Would a withholding requirement related to the audit adjustments make sense and would it facilitate the ability of states to delay making final state-level determinations? So, for example, a state may want to provide a flow-through election for multi-tiered partnerships, but the time involved in allowing this would jeopardize collection. Would a withholding requirement alleviate this risk.



- Do states need to consider providing more explicit information on partnership level apportionment? What if the partners are C corporations versus individuals. What if the partnership is an investment-type partnership with limited partners?
- Does the flow-through process set out in the proposal work where there are multiple tiers? Is there enough time for each tier to get the information, including apportionment information, needed (even if an upper tier agrees to have the partnership pay).
- Does it make sense for states to allow the partnership to de-couple from the federal treatment so that if the partnership pays the federal tax, it nevertheless flows-through the adjustments to the partners for state purposes, or if it pushes out adjustments for federal purposes, it nevertheless pays the state tax at the partnership level? Will this result in permanent differences between federal and state attributes (yes), and will this matter?
- Where there are corporate partners that may have a unitary partnership interest, should the states require that the adjustments flow through (rather than allowing the partnership to pay)? Would this apply to other (minority) partners as well.
- Assuming that the states will require the partnership to report directly and provide detailed information for state purposes, is there a streamlined way to do this and should the states consider some sort of clearinghouse?
- How should nonresident partners be treated if they were excluded from a composite return but did not file an individual return with the state?
- Should an all-partner composite return be substituted for the partnership-pays option at the state level?
- Should states decouple from the computation of an imputed underpayment under the federal rules so that reallocation adjustments are offset (assuming the partnership pays)? Is there any policy reason to do this?
- Whether states need to address potential statute of limitations issues, including the language of those statutes, so that partners can amend state returns as a result of a partnership audit, if they choose to, and report audit adjustments (including partners where the adjustment may result in a refund).
- How do we expect that audits of closely related tiered partnership structures will be handled? Will the IRS do one audit of a partnership within that structure at a time, or do we anticipate that it might do simultaneous audits of partnerships within the same tiered structure, if necessary?