

**Interested Parties Version as of 4/27/18 – Changes Accepted  
Incorporating Changes Related to Partnership Pays Election  
And Including Other Edits and Comments Throughout as of 6/25/18  
DRAFT (WITHOUT SUGGESTED REGULATIONS)**

**Model Uniform Statute and Regulation for Reporting Adjustments to  
Federal Taxable Income and Federal Partnership Audit Adjustments**

*This draft was produced by a working group consisting of representatives of the Council On State Taxation (COST), Tax Executives Institute (TEI), the ABA Section of Taxation’s SALT Committee, the American Institute of CPAs (AICPA), the Institute for Professionals in Taxation (IPT) and the Master Limited Partnership Association (MLPA) as well as a work group set up by the MTC uniformity committee. As of this date, this draft has not been officially endorsed by these organizations.*

This draft has been reformatted with line numbering as well as internal citations simplified and underlined to aid in the final review.

1 **SECTION A. Definitions**

2 The following definitions apply for the purposes of [this subdivision of the State Code]:

3 **(1) “Administrative Adjustment Request”** means an administrative adjustment  
4 request filed by a Partnership under IRC section 6227.

5 **(2) “Audited Partnership”** means a Partnership subject to a Partnership Level  
6 Audit resulting in a Federal Adjustment.

7 **(3) “Corporate Partner”** means a Partner that is subject to tax under [reference to  
8 State law].

9 **(4) “Direct Partner”** means a Partner that holds an interest directly in a Partner-  
10 ship or Pass-Through Entity.

11 **(5) “Exempt Partner”** means a Partner that is exempt from taxation under [refer-  
12 ence to State law] [except on Unrelated Business Taxable Income<sup>1</sup>].

13 **(6) “Federal Adjustment”** means a change to an item or amount determined  
14 under the Internal Revenue Code that is used by a Taxpayer to compute [State tax]  
15 owed whether that change results from action by the IRS, including a Partnership Level  
16 Audit, or the filing of an amended federal return, federal refund claim, or an  
17 Administrative Adjustment Request by the Taxpayer. A Federal Adjustment is positive

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<sup>1</sup> Drafting note: This portion of definition should only be used by the [State] if it taxes unrelated business income.

1 to the extent that it increases state taxable income as determined under [reference to  
2 State laws] and is negative to the extent that it decreases state taxable income as  
3 determined under [reference to State laws].

**Comment [HH1]:** So – as we’ve defined it, a Federal Adjustment would clearly include negative and positive Reallocation Adjustments. (See more on this later.)

4 **(7) “Federal Adjustments Report”** includes methods or forms required by [State  
5 Tax Agency] for use by a Taxpayer to report Final Federal Adjustments, including an  
6 amended [State] tax return, information return, or a uniform multistate report.

7 **(8) “Federal Partnership Representative”** means the person the Partnership  
8 designates for the taxable year as the Partnership’s representative, or the person the  
9 IRS has appointed to act as the Federal Partnership Representative, pursuant to IRC  
10 section 6223(a).

11 **(9) “Final Determination Date”** means the following:

12 (a) Except as provided in Section A(9)(b) and (c), if the Federal Adjustment  
13 arises from an IRS audit or other action by the IRS, the Final Determination Date is  
14 the first day on which no Federal Adjustments arising from that audit or other  
15 action remain to be finally determined, whether by IRS decision with respect to  
16 which all rights of appeal have been waived or exhausted, by agreement, or, if  
17 appealed or contested, by a final decision with respect to which all rights of appeal  
18 have been waived or exhausted. For agreements required to be signed by the IRS  
19 and the Taxpayer, the Final Determination Date is the date on which the last party  
20 signed the agreement.

**Comment [HH2]:** This is necessary because (c) also covers adjustments reported during a partnership audit modification period.

21 (b) For Federal Adjustments arising from an IRS audit or other action by the  
22 IRS, if the Taxpayer filed as a member of a [combined/consolidated return/report  
23 under State law], the Final Determination Date means the first day on which no  
24 related Federal Adjustments arising from that audit remain to be finally deter-  
25 mined, as described in Section A(9)(a), for the entire group.

**Comment [HH3]:** The use of the term “Federal Adjust-ment” here creates the poss-ibility that there could be adjustments that do not affect state tax related items (e.g. federal credits) that remain to be determined – but the adjustments that do affect state taxes would be final. Is that what we want?

26 (c) If the Federal Adjustment results from filing an amended federal return, a  
27 federal refund claim, or an Administrative Adjustment Request, or if it is a Federal  
28 Adjustment reported on an amended federal return or other similar report filed  
29 pursuant to IRC section 6225 (c), the Final Determination Date means the day on  
30 which the amended return, refund claim, Administrative Adjustment Request, or  
31 other similar report was filed.

**Comment [HH4]:** See comment above.

32 **(10) “Final Federal Adjustment”** means a Federal Adjustment after the Final  
33 Determination Date for that Federal Adjustment has passed.

34 **(11) “Indirect Partner”** means a Partner in a Partnership or Pass-Through Entity  
35 that itself holds an interest directly, or through another Indirect Partner, in a  
36 Partnership or Pass-Through Entity.

37 **(12) “IRC”** means the Internal Revenue Code of 1986, as codified at 26 United

1 States Code (U.S.C.) Section 1, et seq., [insert State’s current practice to incorporate IRC]  
2 and applicable regulations as promulgated by the U.S. Department of the Treasury.<sup>2</sup>

3 **(13) “IRS”** means the Internal Revenue Service of the U.S. Department of the  
4 Treasury.

5 **(14) “Non-Resident Partner”** means an individual, trust, or estate Partner that is  
6 not a Resident Partner.

7 **(15) “Partner”** means a person that holds an interest directly or indirectly in a  
8 Partnership or other Pass-Through Entity.

9 **(16) “Partnership”** means an entity subject to taxation under Subchapter K of the  
10 IRC.

11 **(17) “Partnership Level Audit”** means an examination by the IRS at the partner-  
12 ship level pursuant to Subchapter C of Title 26, Subtitle F, Chapter 63 of the IRC, as  
13 enacted by the Bipartisan Budget Act of 2015, Public Law 114-74, which results in  
14 Federal Adjustments.

15 **(18) “Pass-Through Entity”** means an entity, other than a Partnership, that is not  
16 subject to tax under [reference to State law imposing tax on C corporations or other  
17 taxable entities].

18 **(19) “Reallocation Adjustment”** means a **Final** Federal Adjustment resulting  
19 from a Partnership Level Audit or an Administrative Adjustment Request that changes  
20 the shares of [one or more](#) items of partnership income, gain, loss, expense, or credit  
21 allocated to Direct Partners. A positive Reallocation Adjustment means the portion of a  
22 Reallocation Adjustment that would increase federal income for one or more Direct  
23 Partners, and a negative Reallocation Adjustment means the portion of a Reallocation  
24 Adjustment that would decrease federal income for one or more Direct Partners  
25 [pursuant to Regulations under IRC section 6225].

**Comment [HH5]:** Do we need this?

26 **(20) “Resident Partner”** means an individual, trust, or estate Partner that ~~has his~~  
27 ~~or her domicile in or~~ is a resident ~~for tax purposes~~-in [State] [under \[reference to state](#)  
28 [laws\]](#) for the relevant tax period.

29 **(21) “Reviewed Year”** means the taxable year of a Partnership that is subject to a  
30 Partnership Level Audit from which Federal Adjustments arise.

31 **(22) “Taxpayer”** means [insert reference to State definition] and, unless the  
32 context clearly indicates otherwise, includes a Partnership subject to a Partnership  
33 Level Audit or a Partnership that has made an Administrative Adjustment Request, as

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<sup>2</sup> Drafting note: A State may need to address undefined terms. Suggested language – “To the extent terms used in this [article] are not defined in this Section or elsewhere in [citation to chapter in which this article is contained], it is the intent of the Legislature to conform as closely as possible to the terminology used in the amendments to the IRC pertaining to the comprehensive partnership audit regime as contained in the Bipartisan Budget Act of 2015, Public Law 114-74, as amended, and this [article] shall be so interpreted.”

1 well as a Tiered Partner of that Partnership.

2 **(23) “Tiered Partner”** means any Partner that is a Partnership or Pass-Through  
3 Entity.

4 **(24) “Unrelated Business Taxable Income”** has the same meaning as defined in  
5 IRC section 512.<sup>3</sup>

6 **SECTION B. Reporting Adjustments to Federal Taxable Income – General Rule**

7 Except in the case of Final Federal Adjustments that are required to be reported by a  
8 Partnership and its Partners ~~and Indirect Partners~~ using the procedures in Section C,  
9 ~~and Final Federal Adjustments required to be reported for federal purposes under IRC~~  
10 ~~section 6225(a)(2).~~ a Taxpayer shall report and pay any [State] tax due with respect to  
11 Final Federal Adjustments arising from an audit or other action by the IRS or reported  
12 by the Taxpayer on a timely filed amended federal income tax return, including a return  
13 or other similar report filed pursuant to IRC section 6225(c), or federal claim for refund  
14 by filing a Federal Adjustments Report with the [State Tax Agency] for the Reviewed  
15 Year and, if applicable, paying the additional [State] tax owed by the Taxpayer no later  
16 than 180 days after the Final Determination Date.

**Comment [HH6]:** Unnecessary since the term “Partner” includes both direct and indirect partners.

**Comment [HH7]:** I think it’s necessary to specify this here, rather than where we had it in the exclusions to the partnership pays election in Sec. C below. I believe that negative AAR adjustments may get reported under 6225(a)(2) (although I’m not positive) and, even if the partners all file amended state returns, I don’t think we want them including adjustments that, for federal purposes, will be included and passed-through in the adjust-ment year returns and K-1s.

17 **Section C. Reporting Federal Adjustments – Partnership Level Audit and**  
18 **Administrative Adjustment Request**

19 ~~Except for adjustments required to be reported for federal purposes pursuant to IRC~~  
20 ~~section 6225(a)(2) or Final Federal Adjustments arising from a Partnership Level Audit~~  
21 ~~not reported~~ on an amended federal return or other similar report under IRC section  
22 6225(c), ~~and adjustments~~ ~~Final Federal Adjustments~~ arising from ~~a Partnership Level~~  
23 ~~Audit or~~ an Administrative Adjustment Request filed by a Partnership under IRC section  
24 6227 shall be reported as required under this section C.

**Comment [HH8]:** See similar comment in Sec. B. I think it’s necessary to specify this because certain negative adjustments will be passed-through in the partnership returns and K-1s to return-year partners in the “adjust-ment” year returns and if those adjustments are also reported separately under the provisions here, they will be taken into account twice.

25 **(1) State Partnership Representative.**

26 (a) With respect to an action required or permitted to be taken by a Partner-  
27 ship under this Section C and a proceeding under [reference to provisions for State  
28 administrative appeal or judicial review] with respect to that action, the State  
29 Partnership Representative for the Reviewed Year shall have the sole authority to  
30 act on behalf of the Partnership, and ~~its the Partnership’s~~ Direct Partners and  
31 Indirect Partners shall be bound by those actions.

**Comment [HH9]:** The PR could be an “it” and if it was, this reference would be ambiguous.

32 (b) The State Partnership Representative for the Reviewed Year is the Part-  
33 nership’s Federal Partnership Representative unless the Partnership designates in  
34 writing another person as its State Partnership Representative.

35 (c) The [State Tax Agency] may establish reasonable qualifications for and

<sup>3</sup> Drafting note: This term should only be used by the [State] if it taxes unrelated business income.

1 procedures for designating a person, other than the Federal Partnership Repre-  
2 sentative, to be the State Partnership Representative.

3 (2) **Reporting and Payment Requirements for Partnerships Subject to a Final**  
4 **Federal Adjustment and their Direct Partners.** Final Federal Adjustments subject to  
5 the requirements of this Section C. ~~Except for Final Federal Adjustments~~~~except for~~  
6 ~~those~~ subject to a properly made election under Section C(3), Final Federal Adjust-  
7 ~~ments resulting from a Partnership Level Audit or an Administrative Adjustment~~  
8 ~~Request filed by a Partnership under IRC section 6227~~ shall be reported as follows:

9 (a) ~~The Partnership shall, no later than 90 days after the Final Determination~~  
10 ~~Date~~ No later than 90 days after the Final Determination Date, the Partnership  
11 ~~shall;~~

12 (i) File a completed Federal Adjustments Report, including partner level  
13 information as required under [reference to State law], with [State Tax Agen-  
14 cy]; and

15 (ii) Notify each of its Direct Partners of their distributive share of the ~~ad-~~  
16 ~~justments~~ Final Federal Adjustments along with any other information neces-  
17 sary for calculating the state tax in a manner as provided by the [State Tax  
18 Agency]; and

19 (iii) File an amended composite return for Direct Partners as required  
20 under [reference to State law] and/or an amended withholding return for Di-  
21 rect Partners as required under [reference to State law] and pay the addition-  
22 al amount ~~due~~ under [reference to State law(s)] that would have been due had  
23 the Final Federal Adjustments been reported properly as required.

24 (b) [Except as provided under State law for minimal tax liabilities]<sup>4</sup>, no later  
25 than 180 days after the Final Determination Date, each Direct Partner that is taxed  
26 under [reference to State law imposing tax on individuals, trusts, estates, C corpo-  
27 rations, etc.] shall:

28 (i) File a Federal Adjustments Report reporting their distributive share of  
29 the adjustments reported to them under Section C(2)(a)(ii) as required under  
30 [reference to State laws]; and

31 (ii) Pay any additional amount of tax due as if Final Federal Adjustments  
32 had been properly reported, plus any penalty and interest due under [refer-  
33 ence to State law] and less any credit for related amounts paid or withheld  
34 and remitted on behalf of the Direct Partner under Section C(2)(a)(iii).

**Comment [HH10]:** So this references the language added to the intro to C above.

**Comment [HH11]:** Conforming change.

**Comment [HH12]:** What law are we referencing. (See similar comment in (3) below.

**Comment [HH13]:** This is necessary because the type of notice will be different, presumably, than an original year Schedule K-1 – which may be required under separate state law/regs.

<sup>4</sup> DRAFTER'S NOTE: If the state adopts a de minimis rule as further set out in this model, then this section would need to be conditioned on a reference to that rule.

1 (3) **Election – Partnership Pays.** Subject to the limitations in Section C(3)(c), an  
2 Audited Partnership making an election under this Subsection (3) shall:

3 (a) No later than 90 days after the Final Determination Date, file a completed  
4 Federal Adjustments Report, including partner information, and notify the [State  
5 Agency] that it is making the election under this Subsection (3);

6 (b) No later than 180 days after the Final Determination Date, pay an amount,  
7 determined as follows, in lieu of taxes owed by its Direct and Indirect Partners:

8 (i) Exclude from Final Federal Adjustments and any positive Reallocation  
9 Adjustments the distributive share of these adjustments made to an Direct  
10 Exempt Partner that is not Unrelated Business Taxable Income:

11 (ii) Exclude from Final Federal Adjustments and any positive Realloca-  
12 tion Adjustments the distributive share of these adjustments made to a Direct  
13 or Indirect Partner that has filed a Federal Adjustments Report and paid the  
14 [State] tax due, as required under Section B, for the distributive share of ad-  
15 justments reported on a federal amended return or other similar report as re-  
16 quired under IRC section 6225(c) to obtain a modification of federal tax owed;

17 (iii) For the total distributive shares of the remaining Final Federal Ad-  
18 justments plus positive Reallocation Adjustments allocated made to Direct  
19 Corporate Partners or Direct Exempt Partners subject to tax under [reference  
20 to State law] apportion and allocate such adjustments as provided under [ref-  
21 erence to existing multi-state business activity allocation/apportion law or  
22 regulation]; and multiply that the resulting amount by the highest tax rate un-  
23 der [reference to State law];

24 (iv) For the total distributive shares of the remaining Final Federal Ad-  
25 justments plus positive Reallocation Adjustments allocated made to Non-  
26 Resident Direct Partners subject to tax under [reference to State law applying  
27 to individuals and /or trusts], determine the amount of such adjustments  
28 which is [State] source income under [reference to existing non-resident  
29 partner sourcing law or regulation], and multiply this [State] source in-  
30 come the resulting amount by the highest tax rate under [reference to State  
31 law applying to individuals and/or trusts];

32 (v) For the total distributive shares of the remaining Final Federal Ad-  
33 justments plus positive Reallocation Adjustments allocated made to Tiered  
34 Partners:

35 (A) Determine the amount of such adjustments which is of a type  
36 that it would be subject to sourcing to the [State] source income under  
37 [reference to existing State rules for allocating/apportioning income of

**Comment [HH14]:** This is kind of open ended and I wonder if we should specify more exactly what we mean or if we should reference the requirements that may be set out by the agency. See similar comment with respect to (2)(a)(i) above.

**Comment [HH15]:** This seems to some like a long time. Assuming that Tiered Partners get 90 days from the time they receive federal notices, will they also need this much time?

**Comment [HH16]:** I think this is unnecessary language that may have been included to clarify, but could actually create an ambiguity.

**Comment [HH17]:** Unnecessary. See comment above.

**Comment [HH18]:** Unnecessary. See comment above.

**Comment [HH19]:** The use of “allocated” may be confusing in this context.

**Comment [HH20]:** Unnecessary. See comment above.

**Comment [HH21]:** The use of “allocated” may be confusing in this context.

**Comment [HH22]:** Unnecessary. See comment above.

**Comment [HH23]:** The use of “allocated” may be confusing in this context.

**Comment [HH24]:** I think we’re doing two things in this section. First, we’re dividing the adjustments into two categories – those that are allocated/apportioned and those that are sourced solely based on residency.

1 non-resident partners ~~sourcing law or regulation~~; and then determine  
2 the portion of this amount that would be sourced to the state applying  
3 [these rules];

4 (B) Determine the amount of such adjustments which is of a type  
5 that it would not be subject to sourcing to the [State] ~~source income under~~  
6 ~~by a Nonresident Partner under~~ [reference to existing State sourcing  
7 law or regulation rules for income fully sourced based on a taxpayer's resi-  
8 dency];

9 (C) Determine the portion of the amount determined of such ad-  
10 justments in Section C(3)(b)(v)(B) which is [State] ~~source income under~~  
11 ~~[reference to existing sourcing law or regulation for income fully sourced~~  
12 ~~based on a taxpayer's residency]~~ that can be established, under regula-  
13 tion issued by [State Agency], to be properly allocable to ~~non-resident in-~~  
14 ~~direct partners~~ Nonresident Indirect Partners; or—Alternatively, a part-  
15 nership may request a reduction adjustment using the can be excluded  
16 under procedures for Modified Reporting and Payment Method allowed  
17 under Paragraph (5).

18 (vi) Multiply the total of the amounts determined in Section  
19 C(3)(b)(v)(A) and (B) reduced by the amount determined in Section  
20 C(3)(b)(v)(C) by the highest tax rate under [reference to State law applying to  
21 individuals and/or trusts];

22 (vii) For the total distributive shares of the remaining Final Federal Ad-  
23 justments plus positive Reallocation Adjustments allocated made to Resident  
24 Direct Partners subject to tax under [reference to State law applying to indi-  
25 viduals and /or trusts], multiply that amount by the highest tax rate under  
26 [reference to State law applying to individuals and/or trusts];

27 (viii) Add the amounts determined in Section C(3)(b)(iii), (iv), (vi), and  
28 (vii).

29 ~~(b)~~(c) Final Federal Adjustments subject to this election exclude:

30 (i) The distributive share of Final Audit Adjustments, including positive  
31 Reallocation Adjustments, that must be included in the unitary business in-  
32 come of any Direct or Indirect Corporate Partner that the Audited Partnership  
33 is reasonably aware is required to file a return separately or as a member of a  
34 group as provided in [reference to State law]; and

35 (ii) Any Final Federal Adjustments resulting from an Administrative Ad-  
36 justment Request;

37 ~~(iii) Any portion of the Final Federal Adjustments reported or reportable~~

**Comment [HH25]:** This is the second piece (see above) which needs to be explicit.

**Comment [HH26]:** I believe the intent is to include the total of this amount, but reduced under clause (C) below.

**Comment [HH27]:** Unnecessary. See comment above.

**Comment [HH28]:** The use of "allocated" may be confusing in this context.

**Comment [HH29]:** Unnecessary. See comment above.

**Comment [HH30]:** Not sure this is what we mean—or do we mean that the partnership is reasonably aware that the income is being allocated to the corporate partner?

1 ~~on the Audited Partnership's Federal Partnership Tax Return for the adjust-~~  
2 ~~ment year as required under IRC section 6225 and the regulations thereun-~~  
3 ~~der.~~

**Comment [HH31]:** See comment in the introduction to Section C above.

4 ~~(e)(d)~~ {OPTIONAL PROVISIONS}

5 Option A - An Audited Partnership not otherwise subject to any reporting or  
6 payment obligation to [State] that makes an election under this Subsection (3)  
7 consents to be subject to [State] laws related to reporting, assessment, pay-  
8 ment, and collection of [State] tax calculated under the election.

9 Option B - An Audited Partnership not otherwise subject to any reporting or  
10 payment obligation to [State] may not make an election under this Subsection  
11 (3).

12 **(4) Tiered Partners.** ~~Each Tiered Partner and each Indirect Partner of an Audited~~  
13 ~~Partnership that reported Final Federal Adjustments pursuant to Section C(2)(a)(ii)~~  
14 ~~shall be subject to the applicable election, reporting and payment requirements for~~  
15 ~~Audited Partnerships and their Direct Partners under this Section C, notwithstanding~~  
16 ~~the interim time requirements in Subsections (2) and (3), and all reports and~~  
17 ~~payments required to be made by such Partners under this Section C shall be~~  
18 ~~completed within 90 days after the time for filing and furnishing statements to Tiered~~  
19 ~~Partners and their Partners as established by the IRS under IRC section 6226 and the~~  
20 ~~regulations thereunder. The Direct and Indirect Partners of an Audited Partnership~~  
21 ~~that are Tiered Partners, and all of the Partners of those Tiered Partners that are~~  
22 ~~subject to tax under [reference to State laws imposing tax on individuals, trusts,~~  
23 ~~corporations, etc.] are subject to the reporting and payment requirements of Section~~  
24 ~~C(2) the Tiered Partners are entitled to make the elections provided in Section C(3) and~~  
25 ~~(5). The [State Agency] may promulgate regulations to establish procedures and~~  
26 ~~interim time periods for the reports and payments required by Tiered Partners and~~  
27 ~~Indirect their Partners and for making the elections under this Section C. In no case~~  
28 ~~shall the Tiered Partners or their Partners be required to make any reports or~~  
29 ~~payments until 90 days after the time for filing and furnishing statements to Tiered~~  
30 ~~Partners and their Partners as established under IRC section 6226 and the regulations~~  
31 ~~thereunder.~~

**Comment [HH32]:** This needs to be explicit, I think.

32 **(5) Modified Reporting and Payment Method.** ~~Under procedures adopted by~~  
33 ~~and Subject subject~~ to the approval of the [State Agency], an Audited Partnership or  
34 Tiered Partner may enter into an agreement with the [State Agency] to utilize an  
35 alternative reporting and payment method, including applicable time requirements or  
36 any other provision of this Section C, if the Audited Partnership or Tiered Partner  
37 demonstrates that the requested method will reasonably provide for the reporting and

**Comment [HH33]:** I think this may better express what we're going for, but I'm not sure.

**Comment [HH34]:** I think we should be explicit here that there will need to be some procedures set out by the agency for doing this.

1 payment of taxes, penalties, and interest due under the provisions of this Section C.  
2 Application for approval of an alternative reporting and payment method must be  
3 made by the Audited Partnership or Tiered Partner within the time for election as  
4 provided in Section C(3) or (4), as appropriate.

5 **(6) Effect of Election by Audited Partnership or Tiered Partner and Payment**  
6 **of Amount Due.**

7 (a) The election made pursuant to Section C(3) or (5) is irrevocable, unless  
8 [State Agency], in its discretion, determines otherwise.

9 (b) If properly reported and paid by the Audited Partnership or Tiered Part-  
10 ner, the amount determined in Section C(3)(b), or similarly under an optional  
11 election under Section C(5), will be treated as paid in lieu of taxes owed by its  
12 Direct and Indirect Partners, to the extent applicable, on the same Final Federal  
13 Adjustments. The Direct Partners or Indirect Partners may not take any deduction  
14 or credit for this amount or claim a refund of the amount in this State. Nothing in  
15 this Subsection(C)(6) shall preclude a Direct Resident Partners from claiming a  
16 credit against taxes paid to this State pursuant to [reference to State law], any  
17 amounts paid by the Audited Partnership or Tiered Partners on the Resident  
18 Partner's behalf to another state or local tax jurisdiction in accordance with the  
19 provisions of [State law or regulation allowing credit for taxes paid to another  
20 state or locality].

21 **(7) Failure of Audited Partnership or Tiered Partner to Report or Pay.**

22 Nothing in this Section C prevents the [State Agency] from assessing Direct Partners or  
23 Indirect Partners for taxes they owe, using the best information available, in the event  
24 that a Partnership or Tiered Partner fails to timely make any report or payment  
25 required by this Section C for any reason.

26 **SECTION D. De Minimis Exception**

27 The [State Agency] at its discretion may promulgate regulations to establish a de  
28 minimis amount upon which a taxpayer shall not be required to comply with Sections  
29 B and C of this [Chapter].

30 **SECTION E. Assessments of Additional [State] Tax, Interest, and Penalties Arising**  
31 **from Adjustments to Federal Taxable Income – Statute of Limitations**

32 The [State Agency] will assess additional tax, interest, and penalties arising from Final  
33 Federal Adjustments arising from an audit by the IRS, including a Partnership Level  
34 Audit, or reported by the Taxpayer on an amended federal income tax return or as part  
35 of an Administrative Adjustment Request by the following dates:

36 (1) **Timely Reported Federal Adjustments.** If a Taxpayer files with the [State  
37 Agency] a Federal Adjustments Report or an amended [State] tax return as required

**Comment [HH35]:** As discussed in the Staff Report issued June 18, 2018, this is necessary because under Sec. C(2)(b)(vi), all non-investment type income will be apportioned whether the indirect partners are residents or non-residents – so no credits for taxes paid elsewhere should be allowed.

1 within the period specified in Sections B or C, the [State Agency] may assess any  
2 amounts, including in-lieu-of amounts, taxes, interest, and penalties arising from those  
3 Federal Adjustments if [State Agency] issues a notice of the assessment to the Taxpayer  
4 no later than:

5 (a) The expiration of the limitations period specified in [citation to State statute setting forth normal limitations period]; or

6 (b) The expiration of the one (1) year period following the date of filing with  
7 the [State Agency] of the Federal Adjustments Report.

8  
9 **(2) Untimely Reported Federal Adjustments.** If the Taxpayer fails to file the  
10 Federal Adjustments Report within the period specified in Sections B or C, as  
11 appropriate, or the Federal Adjustments Report filed by the Taxpayer omits Federal  
12 Adjustments or understates the correct amount of tax owed, the [State Agency] may  
13 assess amounts or additional amounts including in-lieu-of amounts, taxes, interest,  
14 and penalties arising from the Final Federal Adjustments, if it mails a notice of the  
15 assessment to the Taxpayer by a date which is the latest of the following:

16 (a) The expiration of the limitations period specified in [citation to State statute setting forth normal limitations period]; or

17 (b) The expiration of the one (1) year period following the date the Federal  
18 Adjustments Report was filed with [State Agency]; or

19 (c) Absent fraud, the expiration of the six (6) year period following the Final  
20 Determination Date.

21  
22 **SECTION F. Estimated [State] Tax Payments During the Course of a Federal Audit**

23 A Taxpayer may make estimated payments to the [State Agency], following the process  
24 prescribed by the [State Agency], of the [State] tax expected to result from a pending  
25 IRS audit, prior to the due date of the Federal Adjustments Report, without having to  
26 file the report with the [State Agency]. The estimated tax payments shall be credited  
27 against any tax liability ultimately found to be due to [State] ("Final [State] Tax  
28 Liability") and will limit the accrual of further statutory interest on that amount. If the  
29 estimated tax payments exceed the final tax liability and statutory interest ultimately  
30 determined to be due, the Taxpayer is entitled to a refund or credit for the excess,  
31 provided the Taxpayer files a Federal Adjustments Report or claim for refund or credit  
32 of tax pursuant to [citation to State statute setting forth claim for refund requirements]  
33 no later than one year following the Final Determination Date.

34 **SECTION G. Claims for Refund or Credits of Tax Arising from Final Federal**  
35 **Adjustments Made by the IRS**

36 Notwithstanding the reporting requirement contained in Sections B or C, a Taxpayer  
37 may file a claim for refund or credit of tax arising from Federal Adjustments made by

1 the IRS on or before the later of:

2 (1) The expiration of the last day for filing a claim for refund or credit of [State] tax  
3 pursuant to [citation to State statute setting forth claim for refund requirements],  
4 including any extensions; or

5 (2) One year from the date a Federal Adjustments Report prescribed in Sections B  
6 or C, as applicable, was due to the [State Agency], including any extensions pursuant to  
7 Section G.

8 The Federal Adjustments Report shall serve as the means for the Taxpayer to report  
9 additional tax due, report a claim for refund or credit of tax, and make other  
10 adjustments (including to its net operating losses) resulting from adjustments to the  
11 Taxpayer's federal taxable income.

12 **SECTION H. Scope of Adjustments and Extensions of Time.**

13 (1) Unless otherwise agreed in writing by the Taxpayer and the [State Agency],  
14 any adjustments by the [State Agency] or by the Taxpayer made after the expiration of  
15 the [State's normal statute of limitations for assessment and refund] is limited to  
16 changes to the Taxpayer's tax liability arising from Federal Adjustments.

17 (2) The time periods provided for in [this subdivision of the State Code] may be  
18 extended:

19 (a) Automatically, upon written notice to [State agency], by 60 days for an  
20 Audited Partnership or Tiered Partner which has [10,000] or more Direct Part-  
21 ners; or

22 (b) By written agreement between the Taxpayer and the [State Agency] [pur-  
23 suant to any regulation issued under this Section].

24 (3) Any extension granted under this Section G for filing the Federal Adjustments  
25 Report extends the last day prescribed by law for assessing any additional tax arising  
26 from the adjustments to federal taxable income and the period for filing a claim for  
27 refund or credit of taxes pursuant to [citation to State statute setting forth claim for  
28 refund requirements].

29 **SECTION I. Effective Date**

30 The amendments to this [section/chapter] applies to any adjustments to a Taxpayer's  
31 federal taxable income with a Final Determination Date occurring on and after [date].