

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

*Draft Submitted for Consideration to the Multistate Tax Commission (MTC) on its June 8, 2017 conference call, the Federation of Tax Administrators (FTA) at its June 11-14, 2017 Meeting and the National Conference of State Legislatures (NCSL) at its June 15-16, 2017 Meeting\**

### **SECTION A. Definitions**

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

- (1) **“Amended Schedule K-1 Report”** shall mean a form prescribed by [State Agency] that conforms with the amended Schedule K-1 report form promulgated by the IRS, modified by [State Agency] as necessary for a partner to compute the tax owed or due under [State] law.
- (2) **“Federal Adjustments Report”** shall mean (1) an amended [State] tax return, (2) the [Multistate Tax Commission’s] model report of federal audit adjustments,<sup>1</sup> or (3) any other method or form authorized by the [State Agency]. The Federal Adjustments Report shall contain information reasonably necessary to provide the [State Agency] with an understanding of the adjustments to the Taxpayer’s federal taxable income and their impact on the Taxpayer’s [State] tax liability. The Federal Adjustments Report shall constitute the Taxpayer’s method to report additional [State] tax due, request a refund or credit of [State] tax the Taxpayer previously paid, and report any other changes (including adjustments to net operating losses) resulting from adjustments to the Taxpayer’s federal taxable income.
- (3) **“Federal Partnership Representative”** shall mean the person the Partnership designates, for the taxable year, as the Partnership’s representative pursuant to IRC Section 6223(a).
- (4) (a) **“Final Determination Date”** shall mean the date on which all adjustments made by the IRS to the federal taxable income of a Taxpayer for the taxable year have become final and all appeal rights under the IRC are exhausted or have been waived. In the case of a Taxpayer that is a member of a [State combined reporting group and/or State consolidated] group, the Final Determination Date shall be deemed to occur when the adjustments to the federal taxable income of all members of the Taxpayer’s [State combined reporting group and/or State consolidated] group for the taxable year have become final and all appeal rights under the IRC are exhausted for each member of the group.

---

<sup>1</sup> Drafting note: It is suggested that different forms for corporations and partnerships be created.

- (b) For bilaterally signed agreements between the IRS and the Taxpayer, the Final Determination Date shall be the date on which the last party signed the agreement.
- (5) **“Imputed Underpayment”** shall mean the amount determined by applying the applicable [State] income tax rate, as determined under subsection C(4)(a), to all partnership adjustments made by a Partnership Level Audit properly apportioned to [State].
- (6) **“IRC”** shall mean the Internal Revenue Code of 1986, as codified at 26 United States Code (U.S.C.) Section 1, *et seq.*, [insert State’s current practice to incorporate IRC] and any applicable regulations as promulgated by the U.S. Department of the Treasury.<sup>2</sup>
- (7) **“IRS”** shall mean the Internal Revenue Service of the U.S. Department of the Treasury.
- (8) **“Partnership”** shall mean partnership as defined in [XXX of the State Code].
- (9) **“Partnership Adjustment Tracking Report”** shall mean a form prescribed by [State Agency] that conforms with the form promulgated by the IRS, modified by [State Agency] as necessary to allow [State] to identify all of a Partnership’s partners and their allocable share of any federal audit adjustments.
- (10) **“Partnership Level Audit”** shall mean an examination by the IRS that results in adjustments to Partnership-related items at the Partnership level for the tax year pursuant to Subchapter C of Title 26, Subtitle F, Chapter 63 of the IRC for which the Partnership has not made a qualifying election out pursuant to IRC Section 6221(b).
- (11) **“Resident Partner”** shall mean an individual, estate of a deceased individual, or trust that was a partner of the Partnership and considered a resident of [State] for income tax purposes for the Partnership’s taxable year that is subject to a Partnership Level Audit.
- (12) **“State Partnership Representative”** shall mean the Federal Partnership Representative or the person the Federal Partnership Representative designates for the taxable year to be the Partnership’s representative for [State] tax purposes pursuant to subsection C(1).
- (13) **“[State] tax”** shall mean the [applicable State (or local) tax levied at XXX of the State Code].

---

<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.”

- (14) **“Taxpayer”** shall mean [insert State definition] and includes a Partnership subject to a Partnership Level Audit.
- (15) **“Unrelated Business Taxable Income”** shall have the same meaning as defined in IRC Section 512.

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

Except in the case of a Partnership subject to a Partnership Level Audit, and all direct and indirect partners thereof, a Taxpayer shall notify the [State Agency] of adjustments to its federal taxable income made by the IRS or reported by the Taxpayer on a timely filed amended federal income tax return as follows:

- (1) Except as provided in subsection B(2), a Taxpayer shall file a Federal Adjustments Report with the [State Agency] and pay the additional [State] tax owed by the Taxpayer within one hundred eighty (180) days following the earlier of: (a) the Final Determination Date, or (b) the date on which the Taxpayer filed the amended federal income tax return with the IRS.
- (2) In the event the adjustments to the Taxpayer’s federal taxable income result in a [State] tax liability of less than \$250 (excluding penalties and interest) or a refund of less than \$250 (excluding interest), the Taxpayer may, in lieu of filing a Federal Adjustments Report, notify the [State Agency] in writing or on a form prescribed by the [State Agency] that the federal adjustments are de minimis.
  - (a) The Taxpayer shall file such notice with the [State Agency] within one hundred eighty (180) days following the earlier of the Final Determination Date or the date on which the Taxpayer filed an amended federal income tax return with the IRS. The Taxpayer’s notice shall contain information reasonably necessary to provide the [State Agency] with an understanding of the federal adjustments and their impact on the Taxpayer’s [State] tax liability. In the event the Taxpayer provides the [State Agency] with notice that the adjustments are de minimis pursuant to subsection B(2), the [State Agency] may nevertheless request, in writing, that the Taxpayer file a Federal Adjustments Report pursuant to subsection B(1). The [State Agency] shall mail that request to the Taxpayer within ninety (90) days following the date on which the Taxpayer filed such notice with the [State Agency].
  - (b) In the event the [State Agency] requests a Federal Adjustments Report within the time prescribed in subsection B(2)(a), the Taxpayer shall have sixty (60) days from the date the [State Agency’s] request is mailed to the Taxpayer to file a Federal Adjustments Report with the [State Agency].
  - (c) [Option 1] If the [State Agency] does not request that the Taxpayer file a Federal Adjustments Report within the time prescribed in subsection B(2)(a), the Taxpayer’s

notice that the adjustments are de minimis will be deemed accepted by the [State Agency].

[Option 2] If the [State Agency] does not request that the Taxpayer file a Federal Adjustments Report within the time prescribed in subsection B(2)(a), the Taxpayer's notice that the adjustments are de minimis will be deemed accepted and the [State Agency] may assess and bill the Taxpayer the fixed sum of \$250, which includes statutory interest, if the Taxpayer reported that it would have owed the State a de minimis [State] tax liability.

- (d) Absent fraud, the Taxpayer shall not be subject to additional assessment, nor shall the Taxpayer file a claim for refund or credit, of [State] taxes pursuant to [citation to State statute setting forth claim for refund requirements] based on adjustments to the Taxpayer's federal taxable income for the tax year, unless the applicable statute of limitations for issuing assessments of [State] tax, interest, and penalties has not expired.

### **SECTION C. Reporting Adjustments to Federal Taxable Income – Partnership Level Audits**

This Section C applies only to a Partnership that is subject to a Partnership Level Audit, and the direct and indirect partners of that entity.

- (1) The Federal Partnership Representative for the federal taxable year at issue in a Partnership Level Audit shall have authority to act on behalf of the Partnership with [State Agency] as the State Partnership Representative unless the Federal Partnership Representative has validly delegated such authority to another person. Such delegation shall be made by notifying the [State Agency] in writing and shall be deemed accepted by the [State Agency] unless the [State Agency] disapproves of the designation, for reasonable cause, in writing within fifteen (15) days following the Federal Partnership Representative's mailing of such notice to the [State Agency]. The Partnership and its direct and indirect partners shall be bound by any actions taken under this Section C by the State Partnership Representative.
- (2) In the event the adjustments made by the IRS to the federal taxable income of a Partnership subject to a Partnership Level Audit do not result in an Imputed Underpayment to [State], the State Partnership Representative shall file Amended Schedule K-1 Reports using the procedure in subsection C(4)(b). In addition, a Partnership that has been dissolved or becomes insolvent before or during the prescribed reporting periods provided in subsection C(3) shall be required to use the procedure in subsection C(4)(b).
- (3) (a) In the event the adjustments made by the IRS to the federal taxable income of a Partnership subject to a Partnership Level Audit result in an Imputed Underpayment to [State], the State Partnership Representative shall file a Federal Adjustments Report with the

[State Agency] within sixty (60) days of the Final Determination Date. The Federal Adjustments Report shall indicate the Partnership's taxable income apportioned to [State].

(b) At the time the Federal Adjustments Report is filed, the State Partnership Representative must elect to:

- (i) pay the Imputed Underpayment of [State] tax on behalf of all partners pursuant to subsection C(4)(a);
- (ii) mail Amended Schedule K-1 Reports to each partner reflecting the partner's increase in taxable income apportioned to the State; or
- (iii) pay the Imputed Underpayment of [State] tax on behalf of all partners that are not Resident Partners and mail an Amended Schedule K-1 Report to each Resident Partner reflecting the partner's increase in taxable income apportioned to the State.

(c) The election made under subsection C(3)(b) is irrevocable unless the [State Agency], in its discretion, otherwise allows.

(4) (a) For Partnerships making an election pursuant to subsection C(3)(b)(i) or that fail to timely make an election pursuant to subsection C(3)(b), the State Partnership Representative shall, within one hundred twenty (120) days of the Final Determination Date, file with the [State Agency] a schedule indicating each partner's apportioned share of under-reported [State] taxable income and calculate and pay the additional [State] tax owed by the Partnership as follows:

- (i) the under-reported [State] taxable income [(other than that portion attributable to Unrelated Business Taxable Income)] of all [tax-exempt or nontaxable] partners multiplied by zero (0) percent; plus
- (ii) the under-reported [State] taxable income of all individual partners, S corporations, trusts, estates of deceased partners, disregarded entities that are not owned by a C corporation, or entities treated as Partnerships for [State] tax purposes multiplied by the highest [State] individual income tax rate; plus
- (iii) the under-reported [State] taxable income of all C corporation partners and disregarded entities owned by a C corporation, including other entities taxed as such, [as well as the portion of under-reported [State] taxable income attributable to Unrelated Business Taxable Income of all [tax-exempt or nontaxable] partners] multiplied by the highest [State] corporate income tax rate.

(b) For Partnerships subject to C(2) or that make an election pursuant to subsection C(3)(b)(ii), the State Partnership Representative shall, within ninety (90) days of the Final Determination Date, (i) mail Amended Schedule K-1 Reports to each partner reporting each partner's share of under or over-reported [State] taxable income, and (ii) file with the [State Agency] a schedule indicating each partner's share of under-or over-reported [State] taxable income. Each partner furnished an Amended Schedule K-1 Report under this subsection

shall file a Federal Adjustments Report and pay any additional tax due within one hundred eighty (180) days of the Final Determination Date.

(c) For Partnerships making an election pursuant to subsection C(3)(b)(iii), the State Partnership Representative shall (i) within one hundred twenty (120) days of the Final Determination Date, file with [State Agency] a schedule indicating each partner's share of under-reported [State] taxable income and calculate and pay the additional [State] tax owed by the partners that are not Resident Partners pursuant to the rules of C(4)(a), and (ii) within ninety (90) days of the Final Determination Date, mail Amended Schedule K-1 Reports to each Resident Partner reporting each partner's share of under-reported [State] taxable income. Each Resident Partner furnished an Amended Schedule K-1 Report under this subsection shall file a Federal Adjustments Report and pay any additional tax due within one hundred eighty (180) days of the Final Determination Date.

(d) Each partner's share of under-reported [State] taxable income shall be determined as specified in the Partnership agreement in effect for the federal taxable year subject to adjustment. A partner may not file an amended [State] return or take any similar action to obtain a refund of the tax paid by the Partnership on the partner's behalf under this subsection, and any such action shall be invalid.

(e) The [State Agency] shall promulgate reasonable regulations as it deems necessary to address special allocations among or between the partners that are affected by the Partnership Level Audit.

(5) (a) If a partner that is part of a "tiered partnership structure," as defined in IRC Section 6226(b)(4), receives an Amended Schedule K-1 Report pursuant to subsection C(3)(b)(ii), subsection C(3)(b)(iii) or subsection C(5)(b)(ii), and is a Partnership, S corporation, or other pass-through entity, such partner shall, with respect to that partner's share of the adjustment, file a Partnership Adjustment Tracking Report with the [State Agency] that includes such information as the [State Agency] may reasonably require.

(b) Such partner shall also either (i) calculate the Imputed Underpayment of [State] tax pursuant to the rules of subsection C(4)(a) or (ii) furnish Amended Schedule K-1 Reports pursuant to subsection C(4)(b).

(c) For purposes of subsection C(5)(a), with respect to a partner's share of the adjustment, the Partnership Adjustment Tracking Report shall be filed, and the Imputed Underpayment shall be paid or Amended Schedule K-1 Reports mailed, within sixty (60) days of receipt of the Amended Schedule K-1 Report issued pursuant to subsection C(4)(b) or C(4)(c), but not later than the extended federal due date, regardless if the Partnership seeks an extension, for the federal tax return for the taxable year of the Partnership that includes the Final Determination Date.

(6) For all purposes of this section C, apportionment of [State] taxable income shall be based on the apportionment factors applicable to the federal taxable year that was subject to adjustment, modified as necessary for any adjustments resulting from a Partnership Level

Audit.

**SECTION D. Assessments of Additional [State] Tax, Interest, and Penalties Arising from Adjustments to Federal Taxable Income**

The [State Agency] shall be required to issue any assessment of additional [State] tax, interest, and penalties arising directly from adjustments to a Taxpayer's federal taxable income made by the IRS or reported by the Taxpayer on an amended federal income tax return as follows:

- (1) If the Taxpayer files with the [State Agency] a Federal Adjustments Report or files an amended [State] tax return within the period specified in Section B or C, the [State Agency] may assess any additional [State] tax, interest, and penalties arising directly from the adjustments to the Taxpayer's federal taxable income, provided that it issues a notice of such assessment to the Taxpayer within the later of:
  - (a) The expiration of the limitations period specified in [citation to State statute setting forth normal limitations period]; or
  - (b) The expiration of the one (1) year period following the date of filing with the [State Agency] of the Federal Adjustments Report.
- (2) If the Taxpayer fails to file the Federal Adjustments Report within the period specified in Section B or Section C, or the Federal Adjustments Report understates the correct amount of [State] tax owed, the [State Agency] may assess any additional [State] tax, interest, and penalties arising directly from the adjustments to federal taxable income, but shall issue a notice of such assessment to the Taxpayer within the later of:
  - (a) The expiration of the limitations period specified in [citation to State statute setting forth normal limitations period];
  - (b) The expiration of the one (1) year period following the date the Federal Adjustments Report was filed with [State Agency];
  - (c) The expiration of the one (1) year period following the date on which the IRS, another state, or an organization representing and/or conducting audits for two or more states' tax agencies, notified the [State Agency], in writing or by electronic means, that the IRS made an adjustment with respect to the Taxpayer's federal taxable income for the taxable year; or
  - (d) Absent fraud, the expiration of the six (6) year period following the Final Determination Date.

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

A Taxpayer may make estimated payments to the [State Agency] of the [State] tax that it determines may ultimately be owed to [State] as a result of a pending IRS audit, prior to the due

date of the Federal Adjustments Report, without having to file such a report with the [State Agency]. The estimated [State] tax payments shall be credited against any tax liability ultimately found to be due to [State] (“Final [State] Tax Liability”) and shall limit the accrual of further statutory interest on that amount. If the estimated [State] tax payments exceed the Final [State] Tax Liability and statutory interest ultimately determined to be due on that amount, or the IRS ultimately does not make any adverse adjustments to the Taxpayer’s federal taxable income, the Taxpayer shall be entitled to a refund or credit for the excess, provided the Taxpayer files with [State Agency] a Federal Adjustments Report or claim for refund or credit of [State] tax pursuant to [citation to State statute setting forth claim for refund requirements] within one (1) year following the Final Determination Date.

#### **SECTION F. Claims for Refund or Credits of [State] Tax Arising from Federal Adjustments Made by the IRS**

A Taxpayer may file a claim for refund or credit of [State] tax arising directly from federal adjustments made by the IRS on or before the later of: (1) the expiration of the last day for filing a claim for refund or credit of [State] tax [citation to State statute setting forth claim for refund requirements], including any extensions; or (2) one (1) year from the date a Federal Adjustments Report prescribed in Sections B or C, as applicable, must be filed with [State Agency], including any extensions pursuant to Section G.

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

#### **SECTION G. Scope of Adjustments and Extensions of Time.**

- (1) Unless otherwise agreed in writing by the Taxpayer and the [State Agency], any adjustments by the [State Agency] or by the Taxpayer made after the expiration of the [State’s normal statute of limitations for assessment and refund] shall be limited to changes to the Taxpayer’s [State] tax liability arising directly from adjustments made by the IRS to the Taxpayer’s federal taxable income for that tax year.
- (2) The time periods provided for in [this subdivision of the State Code] may be extended by written agreement between the Taxpayer and the [State Agency]. Any extension granted for filing the Federal Adjustments Report shall extend the last day prescribed by law for assessing any additional [State] tax arising from the adjustments to federal taxable income and the period for filing a claim for refund or credit of [State] taxes pursuant to [citation to State statute setting forth claim for refund requirements].

#### **SECTION H. Effective Date**

The amendments to this [section/chapter] shall apply to any adjustments to a Taxpayer’s federal taxable income with a Final Determination Date occurring on and after X [date].

\* \* \* \* \*

*\*Prepared 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), and the Institute for Professionals in Taxation (IPT). As of this date, this draft has not been officially endorsed by these organizations.*

\* \* \* \* \*

### **Optional Model Regulation or Inclusion in Model Statute**

- (1) For purposes of determining when the “Final Determination Date” has occurred, all adjustments to the Taxpayer’s federal taxable income must be final, and all appeal rights under the IRC are exhausted, for the Taxpayer’s federal taxable year.
- (2) In the case of a Taxpayer that is a member of a [State combined reporting group and/or a State consolidated group], the Final Determination Date is when the federal taxable income for all members of the Taxpayer’s group have become final and all appeal rights under the IRC are exhausted for any member of the group’s federal taxable year.
- (3) The Final Determination Date shall be the date on which one of the following occurs:
  - (a) The Taxpayer: (i) has final adjustments to its federal taxable income resulting from an examination by the IRS pursuant to Section 7601 of the IRC, including any requisite review by the Joint Committee on Taxation pursuant to Section 6405 of the IRC; and (ii) has not filed a petition for redetermination with the United States Tax Court pursuant to Sections 6213 or 6234 of the IRC or a claim for refund with a district court or the United States Court of Federal Claims pursuant to Sections 6234 or 7422 of the IRC, and the time for the Taxpayer to timely file such a petition for redetermination or such a claim for refund has lapsed under the applicable statute.

***Example 1:** The Taxpayer is audited on a depreciation issue and an issue with the accrual of some gross income, both of which will require the Taxpayer’s state tax returns to be adjusted. The depreciation issue resulting in a \$500,000 federal income tax refund is resolved May 20, 2019 with a signed Form 870-AD; however, the accrual of gross income issue, resulting in a \$2.5 million tax deficiency, is not finalized by the IRS until June 30, 2020. The Taxpayer is not sure if it will file an appeal to the Tax Court; however, it ultimately does not file. The Final Determination Date is 90 days from June 30, 2020, when the Taxpayer was last able to timely file an appeal. The Taxpayer only has to report the \$2 million net tax deficiency for both issues.*

- (b) The Taxpayer and the IRS have executed the forms necessary for the relevant tax period so as to establish finality under Section 7121(b) of the IRC.

**Example 2:** *The Taxpayer and the IRS have multiple audit issues for taxable year 2018 and they decide to resolve their issues by entering into a bilateral settlement agreement using a Form 870-AD on November 10, 2020. The Taxpayer signs the settlement on November 11, 2020, and the IRS signs it on November 15, 2020. The Final Determination Date is November 15, 2020.*

- (c) The time for the IRS to make an assessment for the relevant tax period has expired pursuant to Section 6501 of the IRC.

**Example 3:** *The Taxpayer files an amended return with the IRS for taxable year 2018 that was timely filed with the IRS on March 15, 2019. The amended return, reporting \$1 million in additional income, was received by the IRS on February 28, 2022. The IRS has 60 days to assess the Taxpayer for additional tax because the return was filed within 60 days of the expiration of the three-year statute of limitations. The IRS takes no additional action; therefore, the Final Determination Date is 60 days from the date IRS received the amended return on February 28, 2022.*

or

- (d) A judgment from a United States court, or any other court of original jurisdiction to which the United States has submitted to personal jurisdiction regarding a Taxpayer's tax issues, has become final under Section 2412(d)(2)(G) of Title 28 of the United States Code.

**Example 4:** *Same facts as example 1, except the Taxpayer timely pays the \$2 million in tax and files for a refund and sues in federal district court. On July 10, 2021, the Taxpayer receives a ruling from the court denying the refund in full. The Taxpayer timely files an appeal with a federal circuit court of appeals and on August 15, 2022 the Taxpayer receives a final order which allows it to deduct \$1 million more of the IRS assessed tax on the accrual of income. Neither the Taxpayer nor the IRS appeals to the U.S. Supreme Court. The Final Determination Date is 90 days from August 15, 2022, the last day a writ of certiorari, without an extension, could timely be filed.*

- (e) With respect to Partnerships that have undergone a Partnership Level Audit, the latter of (i) the close of the 90th day after the day on which a notice of a final partnership adjustment was mailed, and (ii) if a petition is filed under IRC Section 6234 with respect to such notice, the decision of the court has become final.

**Example 5:** *Partnership's Federal Partnership Representative agrees with IRS changes after the audit is concluded. The Final Determination Date for the Partnership is 90 days from the date the IRS mailed the final partnership adjustment.*