

Model Uniform Statute for Reporting Adjustments to Federal Taxable Income

*Draft Submitted to the MTC Uniformity Committee for Initial Consideration
at its 12/14/2016 Meeting **

SECTION A. Definitions

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

- (1) “Final determination” shall mean and be deemed to occur when the last of any of the following events has occurred with respect to a taxpayer’s federal taxable year, except for entities filing unitary or other types of combined or consolidated returns with the [State Agency], “final determination” shall be based upon the occurrence of the last of such events for all members of the group:
 - (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 6226 of the IRC or a claim for refund with a district court or the United States Court of Federal Claims pursuant to Sections 6226 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;
 - (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) the IRC;
 - (c) The time for the IRS to make an assessment for the relevant tax period has expired pursuant to Section 6501 of the IRC; 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.
- (2) “Report of federal adjustments” shall mean (1) an amended [State] tax return, (2) the Multistate Tax Commission’s model report of federal adjustments**, or (3) any other method authorized by the [State Agency]. The report of federal adjustments 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 report of federal adjustments 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) as a result of the taxpayer’s federal taxable income.

- (3) “Taxpayer” shall mean [insert State definition].
- (4) “[State] tax” shall mean the [applicable State (or local) tax levied at XXX of the State Code].
- (5) “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]
- (6) “IRS” shall mean the Internal Revenue Service of the U.S. Department of the Treasury.

SECTION B. Reporting of IRS Adjustments to Federal Taxable Income

A taxpayer shall notify the [State Agency] of adjustments by the IRS to its federal taxable income as follows:

- (1) Except as provided in subsection (2), a taxpayer whose federal taxable income has been adjusted shall file a report of federal adjustments with the [State Agency] within one hundred eighty (180) days following the date of the final determination.
- (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 report of federal adjustments, notify the [State Agency] in writing or on a form prescribed by the [State Agency] that the federal adjustments are *de minimis*. The taxpayer shall provide the [State Agency] with such notice within one hundred eighty (180) days following the date of the final determination. The taxpayer’s notice shall contain information reasonably necessary to provide the [State Agency] with an understanding of the federal changes and their impact on the taxpayer’s [State] tax liability.
 - (a) In the event the taxpayer provides the [State Agency] with notice that the adjustments are *de minimis* pursuant to Section B(2), the [State Agency] may request, in writing, that the taxpayer file a report of federal adjustments pursuant to Section B(1). The [State Agency] shall issue that request to the taxpayer within the later of: (i) one hundred eighty (180) days following the date on which the taxpayer provided such notice, or (ii) the expiration of the limitations period specified in [citation to State statute setting forth normal limitations period].
 - (b) In the event the [State Agency] requests a report of federal adjustments within the time prescribed in Section B(2)(a), the taxpayer shall have one hundred eighty (180) days from the date the [State Agency’s] request is postmarked in which to file a report of federal adjustments.
 - (c) *[Option 1]* If the [State Agency] does not request that the taxpayer file a report of federal adjustment within the time prescribed in Section 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 report of

federal adjustments within the time prescribed in Section 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 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 allowed to 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 unless the statute of limitations for issuing assessments of [State] tax, interest, and penalties has not expired.

SECTION C. 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 IRS adjustments to a taxpayer's federal taxable income as follows:

- (1) If the taxpayer files a report of federal adjustments within the period specified in Section B, the [State Agency] may assess any additional [State] tax, interest, and penalties arising directly from the adjustments to the taxpayer's federal taxable income and issue a notice of 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 of the report of federal adjustments.
- (2) If the taxpayer fails to file the report of federal adjustments within the period specified in Section B, the [State Agency] may assess any additional [State] tax, interest, and penalties arising directly from the adjustments to federal taxable income and issue a notice of 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 of filing of the report of federal adjustments;
 - (c) The expiration of the one (1) year period following the date on which the Internal Revenue Service, another state, or an organization representing and/or conducting audits for the states' tax agencies, notifies the [State Agency], in writing or by electronic means, that a final determination has been made with respect to the taxpayer's federal taxable income for a specified tax year; or
 - (d) Absent fraud, the expiration of the six (6) year period following the date of the final determination.

SECTION D. Estimated [State] Tax Payments During 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 a final determination for a tax year, without filing a report of federal adjustments with the [State Agency]. The estimated [State] tax payments shall be credited against any tax liability ultimately found to be due to [State] (“final tax liability”) and 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 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 a report of federal adjustments 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 E. Claims for Refund or Credits of [State] Tax Arising from Federal Adjustments.

A taxpayer may file a claim for refund or credit of [State] tax arising directly from federal adjustments based on the later date of: (1) [citation to State statute setting forth claim for refund requirements], including any extensions; or (2) one (1) year from the due date of report of federal adjustments prescribed in Section B, including any extensions pursuant to Section F.

SECTION F. Scope of Adjustments and Extensions of Time.

- (1) Unless otherwise agreed to 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 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, in writing, by agreement between the taxpayer and the [State Agency]. Any extension granted for filing the report of federal adjustments shall extend the last day prescribed by law for assessing any additional [State] tax arising directly 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] arising directly from adjustments to the taxpayer’s federal taxable income.

SECTION G. Effective Date

The amendments to this [section/chapter] apply to final determinations made 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, and the AICPA. As of this date, this draft has not been officially endorsed by these organizations.*

***See attached cover letter to the Uniformity Committee explaining the background of this model report.*