

Mr. Wood Miller  
Chair, Uniformity Committee  
Multistate Tax Commission

Ms. Holly Coon  
Vice-Chair, Uniformity Committee  
Multistate Tax Commission

*Via E-Mail*

**Re: Joint Request from COST, TEI, the ABA SALT Committee, and the AICPA State Tax Working Group to Update the MTC's Model Uniform Statute for Reporting Adjustments to Federal Taxable Income**

Dear Mr. Miller and Ms. Coon:

On behalf of the Council On State Taxation (COST), Tax Executives Institute (TEI), the State and Local Tax Committee of the American Bar Association's Section of Taxation (ABA), and the American Institute of Certified Public Accountants' state tax working group (AICPA) (the "Working Group") \*\*, we submit a draft Model Uniform Statute for Reporting Adjustments to Federal Taxable Income for discussion purposes.

Earlier this year, the Working Group came together to consider the effects that changes to the federal partnership audit procedures, enacted in November 2015 as part of the Bipartisan Budget Act of 2015 (H.R. 1314), will have on state and local taxation. During our group's discussions, it became clear that state and local taxing jurisdictions will be required to substantially amend their statutes for reporting federal audit adjustments when addressing the new federal partnership audit rules.

Although the Multistate Tax Commission (MTC) adopted a model statute for reporting federal audit adjustments in 2003, states and localities have not adopted that model widely, and state and local reporting of federal income tax adjustment statutes continue to vary significantly. For example, state and local reporting statutes do not provide a uniform time period, use consistent triggers, or provide taxpayers with a streamlined method for reporting federal audit adjustments. In addition, jurisdictions vary widely as to whether adjustments must be reported when each federal change becomes final or when all federal changes for the tax year become final; as to whether assessments and refunds are limited to effects arising directly from the federal changes; and, as to whether a report of federal changes will be considered a claim for refund. These variations make the reporting

of federal audit changes to states cumbersome and often impractical within the prescribed reporting periods, leading (we believe) to substantial non-compliance.

Our Working Group has participated in each of the MTC's Partnership Work Group conference calls and met with MTC officials to address how state and local taxing jurisdictions should incorporate the changes to the federal partnership audit rules. We believe that the need to revise state and local federal audit reporting statutes to incorporate the new federal partnership rules provides a unique opportunity for the states to replace their current reporting of federal income tax adjustments statutes with a model and uniform reporting statute. We request that the MTC Uniformity Committee expand the scope of the Partnership Work Group to update the MTC's Model Uniform Statute for Reporting Adjustments to Federal Taxable Income to ensure that the MTC's model statute is workable for both taxpayers and states and localities. Our Working Group has collaborated to incorporate several changes designed to meet this objective, and we respectfully submit it to the MTC for discussion purposes.

The attached draft model statute retains the 180 day reporting period but proposes the following changes to the current MTC model statute:

- Creates a separate section for definitions, some of which will be state-specific, such as the reference to the "Internal Revenue Code" as being in effect on a certain date rather than as in effect from time to time;
- Revises the definition of "final determination" to be more comprehensive and to incorporate concepts from the Internal Revenue Code and underlying regulations;
- Contemplates the MTC's adoption of a model streamlined report to report federal audit adjustments, in lieu of requiring taxpayers to file a complete amended state return for each year under audit;
- Clarifies that the filing of the report of federal audit changes will also constitute a claim for refund, regardless of whether an amended state return is filed;
- Clarifies that any subsequent state assessment or refund must arise directly from the federal changes, unless the state's normal statute of limitations remains open;
- Adds an optional *de minimis* exception whereby taxpayers may notify the state of adjustments to taxable income resulting in an assessment or refund

of less than \$250 in tax without requiring a report of those changes (while providing states the option to nevertheless request such a report);

- Adds a statute of limitations to address instances where the taxpayer failed to file a report of federal changes;
- Adds an estimated tax provision that allows taxpayers to pay estimated state taxes and toll interest prior to filing a report of federal adjustments in anticipation of a potential state tax liability and to obtain a refund of any differential if the payments proved to be greater than the final state tax liability; and
- Clarifies that the effective date of these statutory changes should be prospective, and logically, based on the date of the final determination.

The Working Group believes that the proposed changes are important for fair and efficient state tax administration and that the adoption of these provisions would significantly benefit both taxpayers as well as state and local taxing jurisdictions. We therefore encourage the MTC to evaluate the Working Group's proposed changes to the MTC's model while awaiting technical corrections to the federal partnership audit rule statutes and issuance of Treasury regulations. This will enable the MTC to move forward quickly once the federal partnership audit rules become effective.

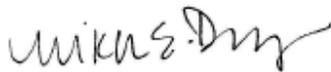
In addition to the attached model statute, we have included the following for your review and consideration:

- A proposed model report of federal audit changes developed by TEI's State and Local Tax Committee, which is similar to the report the South Carolina DOR circulated in its November 14, 2016 request for public comments;
- A copy of COST's policy statement on reporting requirements for federal audit changes;
- A copy of TEI's policy statement on reporting requirements for federal audit changes;
- Recent Bloomberg BNA survey of the states, illustrating the tremendous lack of uniformity of current state reporting of federal income tax adjustment statutes.

We thank you for your time and consideration. Please let us know if you have any questions or concerns.

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Respectfully submitted,



Nikki Dobay  
West Coast Counsel  
Council On State Taxation



Pilar Mata  
Tax Counsel  
Tax Executives Institute

- cc: Ms. Helen Hecht/Mr. Bruce Fort
- cc: COST Board of Directors
- cc: Messrs. Bruce Ely and William Thistle
- cc: Mr. Jonathan Horn/Ms. Eileen Sherr

\*\* The attached Model Uniform Statute for Reporting Adjustments to Federal Taxable Income is for discussion purposes only and has not yet been officially endorsed by COST, TEI, the ABA, or AICPA. Any organization may propose changes of its own during the approval process, which is now under way. In addition, the AICPA is in the process of updating its 1995 policy statement, which it hopes to finalize and publish in January 2017.