

Draft as of July 18, 2018 (Accepting All Edits as Noted in the Redline Draft of the Version Reviewed by the Interested Parties as of 6/27/18 and Adding the Drafter's Note Discussed in the Call on 7/17/18 in Section C(3)(c).)

(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 request
4 filed by a Partnership under IRC section 6227.

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

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

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

11 **(5) "Exempt Partner"** means a Partner that is exempt from taxation under [reference to
12 State law] [except on Unrelated Business Taxable Income¹].

13 **(6) "Federal Adjustment"** means a change to an item or amount determined under the
14 Internal Revenue Code that is used by a Taxpayer to compute [State tax] owed whether that
15 change results from action by the IRS, including a Partnership Level Audit, or the filing of an
16 amended federal return, federal refund claim, or an Administrative Adjustment Request by the
17 Taxpayer. A Federal Adjustment is positive to the extent that it increases state taxable income as
18 determined under [reference to State laws] and is negative to the extent that it decreases state

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

1 taxable income as determined under [reference to State laws].

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

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

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

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

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

22 (c) If the Federal Adjustment results from filing an amended federal return, a federal
23 refund claim, or an Administrative Adjustment Request, or if it is a Federal Adjustment
24 reported on an amended federal return or other similar report filed pursuant to IRC section
25 6225 (c), the Final Determination Date means the day on which the amended return, refund
26 claim, Administrative Adjustment Request, or other similar report was filed.

27 **(10) “Final Federal Adjustment”** means a Federal Adjustment after the Final Determina-
28 tion Date for that Federal Adjustment has passed.

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

32 **(12) “IRC”** means the Internal Revenue Code of 1986, as codified at 26 United States Code
33 (U.S.C.) Section 1, et seq., [insert State’s current practice to incorporate IRC] and applicable

1 regulations as promulgated by the U.S. Department of the Treasury.²

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

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

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

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

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

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

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

20 **(20) “Resident Partner”** means an individual, trust, or estate Partner that is a resident in
21 [State] under [reference to state laws] for the relevant tax period.

22 **(21) “Reviewed Year”** means the taxable year of a Partnership that is subject to a Partner-
23 ship Level Audit from which Federal Adjustments arise.

24 **(22) “Taxpayer”** means [insert reference to State definition] and, unless the context clearly
25 indicates otherwise, includes a Partnership subject to a Partnership Level Audit or a Partnership
26 that has made an Administrative Adjustment Request, as well as a Tiered Partner of that
27 Partnership.

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

29 **(24) “Unrelated Business Taxable Income”** has the same meaning as defined in IRC
30 section 512.³

² 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.”

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

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

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

11 **Section C. Reporting Federal Adjustments – Partnership Level Audit and Administrative**
12 **Adjustment Request**

13 Except for adjustments required to reported for federal purposes pursuant to IRC section
14 6225(a)(2), and the distributive share of adjustments that have been reported as required under
15 Section B, Partnerships and Partners shall report Final Federal Adjustments arising from a
16 Partnership Level Audit or an Administrative Adjustment Request and make payments as
17 required under this Section C.

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

19 (a) With respect to an action required or permitted to be taken by a Partnership under
20 this Section C and a proceeding under [reference to provisions for State administrative
21 appeal or judicial review] with respect to that action, the State Partnership Representative
22 for the Reviewed Year shall have the sole authority to act on behalf of the Partnership, and
23 the Partnership’s Direct Partners and Indirect Partners shall be bound by those actions.

24 (b) The State Partnership Representative for the Reviewed Year is the Partnership’s
25 Federal Partnership Representative unless the Partnership designates in writing another
26 person as its State Partnership Representative.

27 (c) The [State Tax Agency] may establish reasonable qualifications for and procedures
28 for designating a person, other than the Federal Partnership Representative, to be the State
29 Partnership Representative.

30 **(2) Reporting and Payment Requirements for Partnerships Subject to a Final Federal**
31 **Adjustment and their Direct Partners.** Final Federal Adjustments subject to the requirements
32 of this Section C, except for those subject to a properly made election under Section C(3), shall
33 be reported as follows:

34 (a) No later than 90 days after the Final Determination Date, the Partnership shall:

35 (i) File a completed Federal Adjustments Report, including information as re-
36 quired by [State Tax Agency rule or instruction], with [State Tax Agency]; and

1 (ii) Notify each of its Direct Partners of their distributive share of the Final Federal
2 Adjustments including information as required by the [State Tax Agency rule or in-
3 struction]; and

4 (iii) File an amended composite return for Direct Partners as required under [ref-
5 erence to State law] and/or an amended withholding return for Direct Partners as re-
6 quired under [reference to State law] and pay the additional amount under [reference
7 to State law(s)] that would have been due had the Final Federal Adjustments been re-
8 ported properly as required.

9 (b) [Except as provided under State law for minimal tax liabilities]⁴, no later than 180
10 days after the Final Determination Date, each Direct Partner that is taxed under [reference
11 to State law imposing tax on individuals, trusts, estates, C corporations, etc.] shall:

12 (i) File a Federal Adjustments Report reporting their distributive share of the ad-
13 justments reported to them under Section C(2)(a)(ii) as required under [reference to
14 State laws]; and

15 (ii) Pay any additional amount of tax due as if Final Federal Adjustments had been
16 properly reported, plus any penalty and interest due under [reference to State law] and
17 less any credit for related amounts paid or withheld and remitted on behalf of the Di-
18 rect Partner under Section C(2)(a)(iii).

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

21 (a) No later than 90 days after the Final Determination Date, file a completed Federal
22 Adjustments Report, including information as required by the [State Tax Agency rule or
23 instruction], and notify the [State Tax Agency] that it is making the election under this
24 Subsection (3);

25 (b) No later than 180 days after the Final Determination Date, pay an amount, deter-
26 mined as follows, in lieu of taxes owed by its Direct and Indirect Partners:

27 (i) Exclude from Final Federal Adjustments the distributive share of these adjust-
28 ments reported to a Direct Exempt Partner.

29 (ii) For the total distributive shares of the remaining Final Federal Adjustments
30 reported to Direct Corporate Partners subject to tax under [reference to State law] and
31 to Partners subject to tax under [reference state law taxing certain income to tax-
32 exempt entities], apportion and allocate such adjustments as provided under [refer-
33 ence to existing multi-state business activity allocation/apportion law or regulation]

⁴ 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 and multiply the resulting amount by the highest tax rate under [reference to State
2 law(s)];

3 (iii) For the total distributive shares of the remaining Final Federal Adjustments
4 reported to Non-Resident Direct Partners subject to tax under [reference to State law
5 applying to individuals and /or trusts], determine the amount of such adjustments
6 which is [State]-source income under [reference to existing non-resident partner
7 sourcing law or regulation], and multiply the resulting amount by the highest tax rate
8 under [reference to State law applying to individuals and/or trusts];

9 (iv) For the total distributive shares of the remaining Final Federal Adjustments
10 reported to Tiered Partners:

11 (A) Determine the amount of such adjustments which is of a type that it would
12 be subject to sourcing to the [State] under [reference to existing State rules for al-
13 locating/apportioning income of non-resident partners]; and then determine the
14 portion of this amount that would be sourced to the state applying [these rules];

15 (B) Determine the amount of such adjustments which is of a type that it would
16 not be subject to sourcing to the [State] by a Nonresident Partner under [reference
17 to existing State rules for income fully sourced based on a taxpayer's residency];

18 (C) Determine the portion of the amount determined in Section C(3)(b)(iv)(B)
19 that can be established, under regulation issued by [State Agency], to be properly
20 allocable to Nonresident Indirect Partners or other Partners not subject to tax on
21 the adjustments; or that can be excluded under procedures for Modified Reporting
22 and Payment Method allowed under Paragraph (5).

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

26 (vi) For the total distributive shares of the remaining Final Federal Adjustments
27 reported to Resident Direct Partners subject to tax under [reference to State law apply-
28 ing to individuals and /or trusts], multiply that amount by the highest tax rate under
29 [reference to State law applying to individuals and/or trusts];

30 (vii) Add the amounts determined in Section C(3)(b)(ii), (iii), (v), and (vi), along
31 with penalty and interest as provided in [reference to State law].

32 (c) Final Federal Adjustments subject to this election exclude:

33 DRAFTER'S NOTE: THE EXCLUSION IN (i) IS INTENDED TO ADDRESS THE PARTICU-
34 LAR STATE'S LAW WITH RESPECT TO ADJUSTMENTS THAT WOULD FLOW THROUGH
35 TO CORPORATE PARTNERS AND MIGHT BE TREATED AS PART OF THE UNITARY
36 BUSINESS OF THE CORPORATION.

1 (i) The distributive share of Final Audit Adjustments that under [reference to State
2 law] must be included in the unitary business income of any Direct or Indirect Corpo-
3 rate Partner, provided that the Audited Partnership can reasonably determine this; and

4 (ii) Any Final Federal Adjustments resulting from an Administrative Adjustment
5 Request.

6 (d) {OPTIONAL PROVISIONS}

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

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

13 (4) **Tiered Partners.** The Direct and Indirect Partners of an Audited Partnership that are
14 Tiered Partners, and all of the Partners of those Tiered Partners that are subject to tax under
15 [reference to State laws imposing tax on individuals, trusts, corporations, etc.] are subject to the
16 reporting and payment requirements of Section C(2) and the Tiered Partners are entitled to
17 make the elections provided in Section C(3) and (5). The Tiered Partners or their Partners shall
18 make required reports and payments no later than 90 days after the time for filing and
19 furnishing statements to Tiered Partners and their Partners as established under IRC section
20 6226 and the regulations thereunder. The [State Agency] may promulgate regulations to
21 establish procedures and interim time periods for the reports and payments required by Tiered
22 Partners and their Partners and for making the elections under this Section C.

23 (5) **Modified Reporting and Payment Method.** Under procedures adopted by and subject
24 to the approval of the [State Agency], an Audited Partnership or Tiered Partner may enter into
25 an agreement with the [State Agency] to utilize an alternative reporting and payment method,
26 including applicable time requirements or any other provision of this Section C, if the Audited
27 Partnership or Tiered Partner demonstrates that the requested method will reasonably provide
28 for the reporting and payment of taxes, penalties, and interest due under the provisions of this
29 Section C. Application for approval of an alternative reporting and payment method must be
30 made by the Audited Partnership or Tiered Partner within the time for election as provided in
31 Section C(3) or (4), as appropriate.

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

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

36 (b) If properly reported and paid by the Audited Partnership or Tiered Partner, the

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

10 **(7) Failure of Audited Partnership or Tiered Partner to Report or Pay.** Nothing in this
11 Section C prevents the [State Agency] from assessing Direct Partners or Indirect Partners for
12 taxes they owe, using the best information available, in the event that a Partnership or Tiered
13 Partner fails to timely make any report or payment required by this Section C for any reason.

14 **SECTION D. De Minimis Exception**

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

18 **SECTION E. Assessments of Additional [State] Tax, Interest, and Penalties Arising from** 19 **Adjustments to Federal Taxable Income – Statute of Limitations**

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

24 **(1) Timely Reported Federal Adjustments.** If a Taxpayer files with the [State Agency] a
25 Federal Adjustments Report or an amended [State] tax return as required within the period
26 specified in Sections B or C, the [State Agency] may assess any amounts, including in-lieu-of
27 amounts, taxes, interest, and penalties arising from those Federal Adjustments if [State Agency]
28 issues a notice of the assessment to the Taxpayer no later than:

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

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

33 **(2) Untimely Reported Federal Adjustments.** If the Taxpayer fails to file the Federal
34 Adjustments Report within the period specified in Sections B or C, as appropriate, or the Federal
35 Adjustments Report filed by the Taxpayer omits Final Federal Adjustments or understates the
36 correct amount of tax owed, the [State Agency] may assess amounts or additional amounts

1 including in-lieu-of amounts, taxes, interest, and penalties arising from the Final Federal
2 Adjustments, if it mails a notice of the assessment to the Taxpayer by a date which is the latest of
3 the following:

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

6 (b) The expiration of the one (1) year period following the date the Federal Adjust-
7 ments Report was filed with [State Agency]; or

8 (c) Absent fraud, the expiration of the six (6) year period following the Final Determi-
9 nation Date.

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

11 A Taxpayer may make estimated payments to the [State Agency], following the process
12 prescribed by the [State Agency], of the [State] tax expected to result from a pending IRS audit,
13 prior to the due date of the Federal Adjustments Report, without having to file the report with
14 the [State Agency]. The estimated tax payments shall be credited against any tax liability
15 ultimately found to be due to [State] (“Final [State] Tax Liability”) and will limit the accrual of
16 further statutory interest on that amount. If the estimated tax payments exceed the final tax
17 liability and statutory interest ultimately determined to be due, the Taxpayer is entitled to a
18 refund or credit for the excess, provided the Taxpayer files a Federal Adjustments Report or
19 claim for refund or credit of tax pursuant to [citation to State statute setting forth claim for
20 refund requirements] no later than one year following the Final Determination Date.

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

23 Except for Final Federal Adjustments required to be reported for federal purposes under IRC
24 section 6225(a)(2), a Taxpayer may file a claim for refund or credit of tax arising from Federal
25 Adjustments made by the IRS on or before the later of:

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

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

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

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

35 (1) Unless otherwise agreed in writing by the Taxpayer and the [State Agency], any adjust-
36 ments by the [State Agency] or by the Taxpayer made after the expiration of the [State’s normal

1 statute of limitations for assessment and refund] is limited to changes to the Taxpayer's tax
2 liability arising from Federal Adjustments.

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

4 (a) Automatically, upon written notice to [State agency], by 60 days for an Audited
5 Partnership or Tiered Partner which has [10,000] or more Direct Partners; or

6 (b) By written agreement between the Taxpayer and the [State Agency] [pursuant to
7 any regulation issued under this Section].

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

12 **SECTION I. Effective Date**

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