**MTC Partnership Work Group Meeting Notes**

**July 11, 2022**

I. Welcome & Introductions -

Laurie McElhatton, Chair (California-FTB), convened the meeting.

II. Initial Public Comment

There was no initial public comment.

III. Review Notes from June 27, 2022 Call

Laurie stated the notes would be kept during work group deliberations and that the work group products, including the draft model on investment partnerships, would also reflect the discussions and comments received. She asked if there were any corrections to the notes to speak up or contact Helen Hecht, MTC Uniformity Counsel, at hhecht@mtc.gov. There were no changes to the notes.

IV. Review Revisions to Draft Model as of July 11, 2022 (Notes & Comments) and Clean Version and Written Comments Submitted - Bruce Ely

and

V. Discussion

Helen Hecht, MTC, noted there are two versions of the July 11, 2022 draft model on the website, one with edits and notes and one clean version. She reviewed changes to this latest version, noting:

* The model follows the white paper on the taxation of investment partnerships. That white paper found that while half the states had rules sourcing certain investment partnership income to residence (or domicile), the basis for the rules appeared to differ from state to state. The white paper concluded that the primary basis for the sourcing treatment is that the partnership income is of character that if it were earned directly it would be sourced to residence. For this to be the case, the partnership, the partner, and the income must meet certain basic tests. If they do, then this rule provides a safe harbor.
* There were written comments that came in in the week which were not addressed in the current draft.
* One question raised on the last call was how to calculate the 90% income test for a qualified investment partnership (QIP) where there may be net losses. The model now specifies the 90% test uses *gross* income/receipts—defined separately as “amount of gross income or proceeds.” Those gross amounts must be of the same character as the Qualified Investment Income (Loss). This character is determined at the level of the entity that first recognizes these items.
* The introduction to the model has provided that the safe harbor sourcing rule would not apply to those who take an active role in the QIP’s activities, but the model has not made that clear. So changes were made to exclude the “QIP manager” which is defined as a person who “participates in the management of the partnership including recruiting investors, overseeing investments, performing administrative functions, etc.” This means there will need to be a separate state rule for sourcing that income.
* There were two main changes to the QIP definition’s income test. The first relates to the new term for calculating the 90% amount, which now uses the gross income or proceeds. The second specifies that the characterization of the qualifying gross income or proceeds is to be made at the level of the partnership that first recognizes the items.

Helen also reminded the group that the AICPA and ABA have asked for more time to prepare comments on the model. She also noted that the work group had received written comments from Bruce Ely that the recent changes have not responded to. Those comments had raised the issue of trusts and whether the model should also apply to the sourcing of income for and from trusts.

VI. Consideration of Next Issues (While Waiting on Further Comments on Investment Partnership Model) - Slides from Past Survey

The next question for the work group was what issues the group might want to take up next. Helen noted that the group was surveyed last year about the major categories in the detailed outline and asked what issue was most important and what order might we address the issues. Training needs were also discussed. There was no consensus but the group proceeded with training and the investment partnership issue.

Michael Fatale (Massachusetts) commented that he would like the group to take an example that can be used to work through how a partnership income would be taxed outside the safe harbor for qualified investment partnership income. This would give people a better sense of what the safe harbor relates to.

Helen commented that this would potentially raise a number of different issues.

Laurie asked whether that would be too big of a bite for the next step.

Helen responded that some issues may be more straight-forward than others and may not take as much time to address. Other areas may take more time, for example, rules for intercompany transactions.

Michael commented that slicing it up won’t necessarily make the work less complex.

Helen noted that one benefit of the approach is that it would be less abstract. She also commented that we might have to have different examples—and that this might be what is currently lacking in the issue outline. Something that shows how the rules affect the outcome.

Laurie asked whether we would then need to go through the outline and determine where we need a model.

Helen asked whether it would be useful to do another survey of the group.

Angie Hillas (Utah) commented that another survey would be good.

Joseph Wasicak (Wisconsin) commented that as part of the sourcing issue we would also need to address different items of income and whether they are allocated and or apportioned.

Helen also noted there would be differences based on corporate versus individual partners. She committed to get out a brief survey so that we might have the results by the next call of July 25.

Helen also noted that due to the annual meeting in Alaska and travel, etc., the following regularly scheduled call for August 8 would be cancelled. She also noted that staff have finished recording the basic Subchapter K training and Chris is working on edits.

VI. Adjourn