**Proposed Draft – Treatment of Investment Partnership Income**

This draft was prepared by MTC staff for discussion purposes only – current as of June 8, 2022.

* Applies only to income tax on individuals – not corporations.
* Makes an exception for income of individuals that actively participate in the management of the investment partnership or its investments.
* Excludes partnerships that own interests in non-investment partnerships.
* Provides exclusion for certain investment income.

**Section 1. Title. Exclusion from Personal Income Tax of Certain Income from Qualified Investment Partnerships**

Purpose: The purpose of this Act is to create equity in the treatment of certain investment income whether derived from the holding of those investments directly or from an interest in an investment partnership which holds those investments, and to simplify the reporting of certain investment partnership income.

**Section 2. Definitions:**

(a) In this [act]:

(1) “Nonresident QIP Partner” means an individual who is a nonresident as determined under [reference to applicable state law] and holds an ownership interest in a Qualified Investment Partnership.

(2) “Partnership,” as the term is used, alone or in conjunction with other terms, means an entity properly subject to treatment as a partnership under Subchapter K of the Internal Revenue Code.

(3) “Qualified Investment Partnership” means a partnership that meets all the following requirements for the applicable tax period:

(A) No less than 90 percent of the cost of the partnership’s total assets consists of Qualified Investments and the office facilities and tangible personal property reasonably necessary to carry on its activities as an investment partnership;

(B) No less than 90 percent of the partnership’s gross income consists of Qualified Investment Partnership Income;

(C) The partnership is not a dealer in the Qualifying Investments at any time during the tax period. A partnership is a dealer in Qualifying Investments if it meets the definition in 26 U.S.C. § 475(c) or if it regularly purchases those investments from or sells them to customers in the ordinary course of a trade or business or regularly offers to enter into, assume, offset, assign or otherwise terminate positions in Qualifying Investments with customers in the ordinary course of a trade or business;

(D) The partnership is not a financial institution as defined in [reference to state law]; and

(E) The partnership has certified to the [state revenue agency] that it meets the criteria above with respect to the tax period covered by the certification, in a form and at the time prescribed by the [state revenue agency].

(4) “Qualified Investment Partnership Income” means interest, dividends, distributions, or gains and losses from Qualified Investments, including distributive share from lower-tier Qualified Investment Partnerships.

(5) “Qualified Investments” means:

(A) Common stock of corporations, including preferred or debt securities convertible into common stock; and preferred stock, including debt securities convertible into preferred stock;

(B) Bonds, debentures, and other debt securities;

(C) Deposits and any other obligations of banks and other financial institutions regulated by the United States government, a state, or by any political subdivision or governmental agency thereof;

(D) Corporate stock and bond index securities, future contracts, derivative securities, warrants or options on securities, and other similar financial securities and instruments;

(E) Interest in a partnership but only if that partnership, itself, is a Qualified Investment Partnership under Section 2(a)(3) above;

(F) Other similar or related financial or investments contracts, instruments, or securities;

and the term does not include:

(G) Any investment in a captive REIT, as defined by [reference to federal or state law]; or

(H) Loans that are not debt securities.

 (b) All other terms used in this Section are given their general meaning as used under the [reference to personal income tax act].

**Section 3. Certain Qualified Investment Partnership Income of Nonresident QIP Partners Excluded from Personal Income Tax.**

(a) Except as provided in Section 3(b), a Nonresident QIP Partner may exclude from tax under [reference to state income tax] the partner’s distributive share of Qualified Investment Partnership Income.

(b) The exclusion in Section 3(a) does not apply to the distributive share of Qualified Investment Partnership income to the extent derived directly or indirectly from an investment in an entity if the Nonresident QIP Partner holds or has held a direct ownership interest in that entity, unless the entity is a publicly traded entity and the Nonresident QIP Partner did not actively participate in the entity’s activities.

**Section 4. Authority Delegated to the [State Revenue Agency].**

(a) The [state revenue agency] has authority to issue regulations and other instructions to carry out this [Act] including, [but not limited to]:

(1) Requirements for the certification of Qualified Investment Partnerships;

(2) Requirements for information returns to be filed by Qualified Investment Partnerships including requirements to provide lists of partner names and addresses, lists of investments or other investment information, lists of other assets and their values, etc.

(3) Rules for the calculation of asset and income values for purposes of implementing the requirements of this [Act];

(4) Filing of withholding [and/or composite returns] by Qualified Investment Partnerships when any income of such partnerships is subject to tax in this state and as provided by this Section and [reference to state law].

(b) Consistent with the purpose of this Act, the [state revenue agency] has authority to issue regulations to effectuate that purpose and to prevent abuse including rules creating rebuttable presumptions as to when a Qualified Investment Partnership’s certification may be revoked and its income or a portion thereof subjected to tax. Further, if the [state revenue agency] determines that this Act has been used to avoid [state] income tax liability, the [state revenue agency] shall have the authority to revoke the certification of the Qualified Investment Partnership and distribute, apportion, or allocate the partnership’s income in accordance with state law for sourcing partnership income.