

INTERESTED PARTIES' VERSION – ~~DECEMBER 20, 2017~~ January 3, 2018

**Model Uniform Statute and Regulation for Reporting Adjustments to Federal Taxable Income and
Federal Partnership Audit Adjustments**

Revised Draft (Version #5.1) Submitted for Consideration ~~on December 20, 2017~~ on January 3, 2018

SECTION A. Definitions

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

- (1) “Administrative Adjustment Request” means an administrative adjustment request filed by a Partnership under IRC section 6227.
- (2) “Audited Partnership” means a Partnership subject to a Federal Adjustment resulting from a Partnership Level Audit.
- (3) “Corporate Partner” means a Partner that is subject to tax under [reference to State Law].
- (4) “Direct Partner” means a Partner that holds an interest directly in a Partnership or Pass-Through Entity.
- (5) “Exempt Partner” means a Partner that is exempt from taxation under [reference to state law] [except on Unrelated Business Taxable Income¹].
- (6) “Federal Adjustment” means a change to an item or amount determined under the Internal Revenue Code that is used by a Taxpayer to compute state tax owed for the Reviewed Year whether that change results from action by the IRS, including a Partnership Level Audit, or the filing of an amended federal return, federal refund claim, or an Administrative Adjustment Request by the Taxpayer. A Federal Adjustment is positive to the extent that it increases state taxable income as determined under [reference to State Law] and is negative to the extent that it decreases state taxable income as determined under [reference to State Law].
- (7) “Federal Adjustments Report” includes a method or form required by [State Agency] for use by a Taxpayer to report Final Federal Adjustments, including an amended [State] tax return or a uniform multistate report.
- (8) “Federal Partnership Representative” means the person the Partnership designates for the taxable year as the Partnership’s representative, or the person the IRS has appointed to act as the Federal Partnership Representative, pursuant to IRC Section 6223(a).
- (9) “Final Determination Date” means the following:
 - (a) Except as provided in paragraph (b), if the related Federal Adjustment arises from an IRS audit, the Final Determination Date is the first day on which no Federal Adjustments arising from that audit remain to be finally determined, whether by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the IRS and the Taxpayer, the Final

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

Determination Date is the date on which the last party signed the agreement.

(b) If the Taxpayer filed as a member of a [combined/consolidated return/report under State law], the Final Determination Date means the first day on which no related Federal Adjustments arising from that audit remain to be finally determined for the entire group.

(c) If the Federal Adjustment results from filing an amended federal return, a federal refund claim, or an Administrative Adjustment Request, the Final Determination Date means the day on which the amended return, refund claim, or Administrative Adjustment Request was filed.

(10) “Final Federal Adjustment” means a Federal Adjustment after the Final Determination Date for that Federal Adjustment has passed.

==

~~(1)~~

~~(2)(1) “Partnership” means an entity subject to taxation under Subchapter K of the IRC.~~

~~(3)(1) “Pass Through Entity” means an entity, other than a Partnership, that is not subject to tax under [reference to State Law imposing tax on C corporations or other taxable entities].~~

~~(4)(1) “Partner” means a person that holds an interest directly or indirectly in a Partnership or other Pass Through Entity.~~

~~(5)(1) “Direct Partner” means a Partner that holds an interest directly in a Partnership or Pass Through Entity.~~

~~(6)(11) “Indirect Partner” means a Partner in a Partnership or Pass-Through Entity that itself holds an interest directly, or through another Indirect Partner, in a Partnership or Pass-Through Entity.~~

~~“Exempt Partner” means a Partner that is exempt from taxation under [reference to state law] [except on Unrelated Business Taxable Income²].~~

~~“Corporate Partner” means a Partner that is subject to tax under [reference to State Law].~~

~~“Resident Partner” means an individual Partner that has his or her domicile in or is a resident for tax purposes in [State].~~

~~“Composite Return Partner” means a Partner in a Partnership that was required to be included in a composite return pursuant to [reference to State Law or administrative authority] in the Reviewed Year.~~

~~“Withholding Partner” means a Partner in a Partnership for whom the Partnership was required to withhold tax pursuant to [reference to State Law or administrative authority] for the Reviewed Year.~~

~~“Tiered Partner” means any Partner that is a Partnership or Pass-Through Entity.~~

² Drafting note: This portion of definition should only be used by the [State] if it taxes unrelated business income.

~~“Administrative Adjustment Request” means an administrative adjustment request filed by a Partnership under IRC section 6227.~~

~~“Federal Adjustment” means a change to an item or amount determined under the Internal Revenue Code that is used by a Taxpayer to compute state tax owed for the Reviewed Year whether that change results from action by the IRS, including a Partnership Level Audit, or the filing of an amended federal return, federal refund claim, or an Administrative Adjustment Request by the Taxpayer. A Federal Adjustment is positive to the extent that it increases state taxable income as determined under [reference to State Law] and is negative to the extent that it decreases state taxable income as determined under [reference to State Law].~~

~~“Final Federal Adjustment” means a Federal Adjustment after the Final Determination Date for that Federal Adjustment has passed. —~~

~~“Federal Adjustments Report” includes a method or form required by [State Agency] for use by a Taxpayer to report Final Federal Adjustments, including an amended [State] tax return or a uniform multistate report.~~

~~“Federal Partnership Representative” means the person the Partnership designates for the taxable year as the Partnership’s representative, or the person the IRS has appointed to act as the Federal Partnership Representative, pursuant to IRC Section 6223(a).~~

~~“Final Determination Date” means the following:~~

~~Except as provided in paragraph (b), if the related Federal Adjustment arises from an IRS audit, the Final Determination Date is the first day on which no Federal Adjustments arising from that audit remain to be finally determined, whether by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the IRS and the Taxpayer, the Final Determination Date is the date on which the last party signed the agreement.~~

~~If the Taxpayer filed as a member of a [combined/consolidated return/report under State law], the Final Determination Date means the first day on which no related Federal Adjustments arising from that audit remain to be finally determined for the entire group.~~

~~If the Federal Adjustment results from filing an amended federal return, a federal refund claim, or an Administrative Adjustment Request, the Final Determination Date means the day on which the amended return, refund claim, or Administrative Adjustment Request was filed.~~

~~(7)(12) — “IRC” means 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] and applicable regulations as promulgated by the U.S. Department of the Treasury.³

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

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

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

~~“Pass-Through Entity” means an entity, other than a Partnership, that is not subject to tax under [reference to State Law imposing tax on C corporations or other taxable entities].~~

~~“Partner” means a person that holds an interest directly or indirectly in a Partnership or other Pass-Through Entity.~~

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

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

~~(8)~~

(18) **“Reallocation Adjustment”** means a Final Federal Adjustment that changes the shares of items of partnership income, gain, loss, expense, or credit allocated to Direct Partners. A positive Reallocation Adjustment means a Reallocation Adjustment that would increase state taxable income for Direct Partners, and a negative Reallocation Adjustment means a Reallocation Adjustment that would decrease state taxable income for Direct Partners.

(19) **“Resident Partner”** means an individual, trust, or estate Partner that has his or her domicile in or is a resident for tax purposes in [State].

~~(9)~~(20) **“Reviewed Year”** means the taxable year of a Partnership that is subject to a Partnership Level Audit from which Federal Adjustments arise.

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

³ 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.”

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

~~(10)~~(23) “Unrelated Business Taxable Income” has the same meaning as defined in IRC Section 512.⁴

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

Except in the case of Final Federal Adjustments arising from a Partnership Level Audit or an Administrative Adjustment Request filed by a Partnership under IRC section 6227, which are required to be reported by a Partnership and its Partners and Indirect Partners using the procedures in Section C, a Taxpayer shall notify the [State Agency] of Final Federal Adjustments arising from an audit by the IRS or reported by the Taxpayer on a timely filed amended federal income tax return, including a return filed pursuant to IRC section 6225, or federal claim for refund as follows:

- (1) **Reporting of Final Federal Adjustments.** Except as provided in subsection B(2), a Taxpayer shall file a Federal Adjustments Report with the [State Agency] for the Reviewed Year and, if applicable, pay the additional [State] tax owed by the Taxpayer no later than 180 days after the Final Determination Date.
- (2) **De Minimis Exception.**
 - (a) **Notice of De Minimis Adjustments.** 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, the Taxpayer may, in lieu of filing a Federal Adjustments Report, notify the [State Agency] in writing or on a form prescribed by the [State Agency] that the Final Federal Adjustments are de minimis. The Taxpayer shall file that notice with the [State Agency] no later than 180 days following the earlier of the Final Determination Date or the date on which the Taxpayer filed an amended federal income tax return or claim for refund with the IRS. The Taxpayer’s notice shall contain information reasonably necessary to provide the [State Agency] with an understanding of the Final Federal Adjustments and their impact on the Taxpayer’s [State] tax liability.
 - (b) **Option to Request a Federal Adjustments Report.** In the event the Taxpayer provides the [State Agency] with notice that the adjustments are de minimis pursuant to subsection B(2), the [State Agency] may nevertheless request, in writing, that the Taxpayer file a Federal Adjustments Report. The [State Agency] shall mail that request to the Taxpayer no later than 90 days after the date on which the Taxpayer filed the notice with the [State Agency].
 - (c) **Filing of Requested Federal Adjustments Report.** In the event the [State Agency] requests a Federal Adjustments Report within the time prescribed in subsection B(2)(b), the Taxpayer has 60 days from the date the [State Agency’s] request is mailed to the Taxpayer to file a Federal Adjustments Report with the [State Agency] and, if applicable, pay the additional [State] tax owed by the Taxpayer.
 - (d) **State Tax Liability.** [Option 1] If the Taxpayer reported that it would have owed the State a de minimis [State] tax liability or was entitled to a de minimis [State] tax refund, and the [State Agency] does not request that the Taxpayer file a Federal Adjustments Report within

⁴ Drafting note: This term should only be used by the [State] if it taxes unrelated business income.

the time prescribed in subsection B(2)(b), the Taxpayer's notice that the adjustments are de minimis will be accepted by the [State Agency], and no [State] tax shall be due or refunded.

[Option 2] If the Taxpayer reported that it would have owed the State a de minimis [State] tax liability and the [State Agency] does not request that the Taxpayer file a Federal Adjustments Report within the time prescribed in subsection B(2)(b), the Taxpayer's notice that the adjustments are de minimis will be accepted by the [State Agency] and the [State Agency] may assess and bill the Taxpayer the fixed sum of \$250, which will include statutory interest and penalties.

- (e) **Finality of De Minimis Adjustments.** Absent fraud, the Taxpayer will not be subject to additional assessment, nor is the Taxpayer permitted 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 de minimis adjustments to the Taxpayer's federal taxable income for the tax year reported pursuant to subsection B(2)(a).

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

(1) State Partnership Representative.

- (a) With respect to an action required or permitted to be taken by a Partnership under this Section C and a proceeding under [reference to provisions for State administrative appeal or judicial review] with respect to Federal Adjustments arising from a Partnership Level Audit or an Administrative Adjustment Request, the State Partnership Representative for the Reviewed Year shall have the sole authority to act on behalf of the Partnership, and its Partners and Indirect Partners shall be bound by those actions.
- (b) The State Partnership Representative for the Reviewed Year is the Partnership's Federal Partnership Representative unless the Partnership designates in writing another person as its State Partnership Representative.
- (c) The [State Agency] may establish reasonable qualifications for and procedures for designating a person, other than the Federal Partnership Representative, to be the State Partnership Representative.

(2) Reporting and Payment Requirements for Partnerships Subject to a Final Federal Adjustment and their Direct Partners. Unless an Audited Partnership makes the election in subsection (3), then, for all Final Federal Adjustments:

- (a) The Audited Partnership shall, no later than 90 days after the Final Determination Date,
 - (i) file a completed Federal Adjustment Report, including partner level information as required under [reference to State law] with [State Agency]; and
 - (ii) notify each of its Direct Partners of their distributive share of the adjustments; and
 - (iii) file an amended composite ~~return~~ report for ~~Composite Return~~ Direct Partners as required under [reference to State Law] and/or an amended withholding ~~return~~ report for ~~Withholding~~ Direct Partners as required under [reference to State Law] and pay the additional amount due under [reference to State Law(s)] that would have been due had

the Federal Adjustments been reported properly as required.

- (b) [Except as provided under {State law} for minimal tax liabilities], no later than 180 days after the Final Determination Date, each Direct Partner, other than a Tiered Partner, that is taxed under [reference to State Law] shall:
 - (i) file a Federal Adjustment Report reporting their distributive share of the adjustments reported to them under subparagraph (a)(ii) of subsection (2) as required under [reference to State Laws]; and
 - (ii) pay any additional amount of tax due as if the Final Federal Adjustment had been properly reported, plus any penalty and interest due under [reference to State Law] and less any credit for related amounts paid or withheld and remitted on behalf of the Direct Partner by the Partnership or Pass-Through Entity under subparagraph (a)(iii) of subsection (2).
- (3) **Election – Partnership Pays.** If an Audited Partnership makes an election under this subsection, it shall:
 - (a) No later than 90 days after the Final Determination Date, file a completed Federal Adjustment Report, including partner level information, and notify the [State Agency] that it is making the election under this subsection;
 - (b) No later than 180 days after the Final Determination Date, pay an amount, determined as follows, in lieu of taxes owed by its Direct Partners:
 - (i) Exclude from Final Federal Adjustments and any positive Reallocation Adjustments the distributive share of these adjustments made to an Exempt Partner that is not Unrelated Business Taxable Income:
 - (ii) Exclude from Final Federal Adjustments and any positive Reallocation Adjustments the distributive share of these adjustments made to a Partner that has previously filed a valid Federal Adjustment Report under Section B reporting such distributive share and paid any additional [State] tax liability due;
 - (iii) Allocate and apportion at the Partnership level using [reference to existing multi-state business activity allocation/apportion law or regulation], all remaining Final Federal Adjustments and positive Reallocation Adjustments to [State];
 - (iv) Determine the total distributive share of the allocated and apportioned Final Federal Adjustments and positive Reallocation Adjustments determined in subparagraph (iii) that are allocated to Corporate Partners or Exempt Partners subject to tax under [reference to State Law], the total distributive share allocated to Partners subject to tax under [reference to State Law applying to individuals and/or trusts] and the total distributive share allocated to any remaining Partners, including Pass-Through Entities;
 - (v) For the total distributive shares of net Final Federal Adjustments plus positive Reallocation Adjustments allocated to Corporate Partners or Exempt Partners subject to tax under [reference to State Law] as determined in subparagraph (iv), multiply the total

by the highest tax rate under [reference to State Law];

(vi) For the total distributive shares of net Final Federal Adjustments plus positive Reallocation Adjustments allocated to Partners subject to tax under [reference to State Law applying to individuals and /or trusts] plus the total distributive shares allocated to any remaining Partners, including Pass-Through Entities, as determined in subparagraph (iv), multiply the total by the highest tax rate under [reference to State Law applying to individuals and/or trusts];

(vii) Add to the amount determined in subparagraph (v) to the amount determined in subparagraph (vi).

(4) **Tiered Partners.** Each Tiered Partner and each Indirect Partner of an Audited Partnership that reported Final Federal Adjustments pursuant to subsection C(2)(a)(ii) shall be subject to the applicable election, reporting and payment requirements for Audited Partnerships and their Direct Partners under this Section, notwithstanding the interim time requirements in subsections (2) and (3), and all reports and payments required to be made by such Partners under this Section shall be completed within 90 days after the time for filing and furnishing statements to Tiered Partners and their Partners as established by the IRS under IRC section 6226 and regulation section [301.6226.3(e)(3)(ii)⁵].

(5) **Modified Reporting and Payment Method.** Subject to the approval of the [State Agency], an Audited Partnership or Tiered Partner may use a different reporting and payment method if the Audited Partnership or Tiered Partner demonstrates that the requested method will reasonably provide for the reporting and payment of taxes, penalties, and interest owed.

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

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

(b) If properly reported and paid by the Audited Partnership or Tiered Partner, the amount determined in paragraph (b) of subsection C(3), or similarly under an optional election, will be treated as paid in lieu of taxes owed by its Direct Partners on the same Final Federal Adjustments. The Direct Partners or Indirect Partners may not take any deduction or credit for this amount or claim a refund of the amount in this State. Nothing in this subsection shall preclude Resident Partners from claiming a credit against taxes paid to this State pursuant to [reference to State Law], any amounts paid by the Audited Partnership or Tiered Partners on the Resident Partner's behalf to another state or local tax jurisdiction.

(7) **Failure of Audited Partnership or Tiered Partner to Report or Pay.** Nothing in this Section C is intended to prevent the [State Agency] from assessing Direct Partners or Indirect Partners for taxes they owe in the event that an Audited Partnership or Tiered Partner fails to timely make any report or payment required by this Section for any reason.

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

The [State Agency] will assess additional [State] tax, interest, and penalties arising from Final Federal

⁵ This is the current regulation citation, as proposed by the IRS on December 19, 2017

Adjustments arising from an audit by the IRS, including a Partnership Level Audit, or reported by the Taxpayer on an amended federal income tax return or as part of an Administrative Adjustment Request by the following dates:

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

- (2) **Untimely Reported Federal Adjustments.** If the Taxpayer fails to file the Federal Adjustments Report within the period specified in Section B or Section C, as appropriate, or the Federal Adjustments Report filed by the Taxpayer omits Federal Adjustments or understates the correct amount of [State] tax owed, the [State Agency] may assess amounts or additional amounts including in-lieu-of amounts, taxes, interest, and penalties arising from the Final Federal Adjustments, if it mails a notice of the assessment to the Taxpayer by a date which is the latest of the following:
 - (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 the Federal Adjustments Report was filed with [State Agency]; or
 - (c) Absent fraud, the expiration of the six (6) year period following the Final Determination Date.

SECTION E. Estimated [State] Tax Payments During the Course of a 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 the due date of the Federal Adjustments Report, without having to file the report with the [State Agency]. The estimated [State] tax payments shall be credited against any tax liability ultimately found to be due to [State] (“Final [State] Tax Liability”) and will 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 adverse adjustments to the Taxpayer’s federal taxable income, the Taxpayer is entitled to a refund or credit for the excess, provided the Taxpayer files with [State Agency] a Federal Adjustments Report or claim for refund or credit of [State] tax pursuant to [citation to State statute setting forth claim for refund requirements] no later than one (1) year following the Final Determination Date.

SECTION F. Claims for Refund or Credits of [State] Tax Arising from Final Federal Adjustments Made by the IRS

Notwithstanding the reporting requirement contained in Sections B or C, a Taxpayer may file a claim for refund or credit of [State] tax arising directly or indirectly from Federal Adjustments made by the IRS on or before the later of:

- (1) the expiration of the last day for filing a claim for refund or credit of [State] tax pursuant to [citation to State statute setting forth claim for refund requirements], including any extensions; or
- (2) one (1) year from the date a Federal Adjustments Report prescribed in Sections B or C, as applicable, was due to the [State Agency], including any extensions pursuant to Section G.

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

SECTION G. Scope of Adjustments and Extensions of Time.

- (1) Unless otherwise agreed in writing 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] is limited to changes to the Taxpayer’s [State] tax liability arising directly from Federal Adjustments.
- (2) The time periods provided for in [this subdivision of the State Code] may be extended:
 - (a) automatically, upon written notice to [State agency], by 60 days for an Audited Partnership or Tiered Partner which has [10,000] or more Direct Partners; or
 - (b) by written agreement between the Taxpayer and the [State Agency] [pursuant to any regulation issued under this section].
- (3) Any extension granted under this Section G for filing the Federal Adjustments Report extends the last day prescribed by law for assessing any additional [State] tax arising 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].

SECTION H. Effective Date

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

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**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, the American Institute of CPAs (AICPA), the Institute for Professionals in Taxation (IPT) and the Master Limited Partnership Association (MLPA). As of this date, this draft has not been officially endorsed by these organizations.*

* * * * *

Optional Model Regulation or Inclusion in Model Statute

- (1)
 - (a) The “Final Determination Date” that arises from an IRS audit is the first day on which all adjustments to the Taxpayer’s federal taxable income are final, and all appeal rights under the IRC are exhausted, for the Taxpayer’s federal taxable year.
 - (b) In the case of a Taxpayer that is a member of a [State combined reporting group and/or a State consolidated group], the Final Determination Date is the date on which the federal taxable income for all members of the Taxpayer’s group have become final and all appeal rights under the IRC are exhausted for any member of the group’s federal taxable year.
- (2) The “Final Determination Date” that arises from the filing of an amended final return, a federal refund claim, or the filing by a Partnership of an Administrative Adjustment Request, is the day on which the amended return, refund claim or Administrative Adjustment Request was filed to the IRS.
- (3) The Final Determination Date shall be the date on which one of the following occurs:
 - (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 6234 of the IRC or a claim for refund with a district court or the United States Court of Federal Claims pursuant to Sections 6234 or 7422 of the IRC, and the time for the Taxpayer to timely file the petition for redetermination or a claim for refund has lapsed under the applicable statute.

Example 1: The Taxpayer is audited on a depreciation issue and an issue with the accrual of some gross income, both of which will require the Taxpayer’s state tax returns to be adjusted. The depreciation issue resulting in a \$500,000 federal income tax refund is resolved May 20, 2019 with a signed Form 870-AD; however, the accrual of gross income issue, resulting in a \$2.5 million tax deficiency, is not finalized by the IRS until June 30, 2020. The Taxpayer is not sure if it will file an appeal to the Tax Court; however, it ultimately does not file. The Final Determination Date is 90 days from June 30, 2020, when the Taxpayer was last able to timely file an appeal. The Taxpayer only has to report the \$2 million net tax deficiency for both issues.

- (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) of the IRC.

Example 2: The Taxpayer and the IRS have multiple audit issues for taxable year 2018 and they decide to resolve their issues by entering into a bilateral settlement agreement using a Form 870-AD on November 10, 2020. The Taxpayer signs the settlement on November 11, 2020, and the IRS signs it on November 15, 2020. The Final Determination Date is November 15, 2020.

- (c) The time for the IRS to make an assessment for the relevant tax period has expired pursuant to Section 6501 of the IRC.

Example 3: The Taxpayer files an amended return with the IRS for taxable year 2018 that was timely filed with the IRS on March 15, 2019. The amended return, reporting \$1 million in additional income, was received by the IRS on February 28, 2022. The IRS has 60 days to assess the Taxpayer for additional tax because the return was filed no later than 60 days after the

expiration of the three-year statute of limitations. The IRS takes no additional action; therefore, the Final Determination Date is 60 days from the date IRS received the amended return on February 28, 2022.

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.

Example 4: *Same facts as example 1, except the Taxpayer timely pays the \$2 million in tax and files for a refund and sues in federal district court. On July 10, 2021, the Taxpayer receives a ruling from the court denying the refund in full. The Taxpayer timely files an appeal with a federal circuit court of appeals and on August 15, 2022 the Taxpayer receives a final order which allows it to deduct \$1 million more of the IRS assessed tax on the accrual of income. Neither the Taxpayer nor the IRS appeals to the U.S. Supreme Court. The Final Determination Date is 90 days from August 15, 2022, the last day a writ of certiorari, without an extension, could timely be filed.*

- (e) With respect to Partnerships that have undergone a Partnership Level Audit, the latter of (i) the close of the 90th day after the day on which a notice of a final partnership adjustment was mailed, and (ii) if a petition is filed under IRC Section 6234 with respect to the notice, the decision of the court has become final.

Example 5: *Partnership's Federal Partnership Representative agrees with IRS changes after the audit is concluded. The Final Determination Date for the Partnership is 90 days from the date the IRS mailed the final partnership adjustment.*

- (f) The Taxpayer files an amended return with the IRS.

Example 6: *A Taxpayer files an amended return (could be additional tax due or a refund) with the IRS for taxable year 2015 on June 15, 2018. The Final Determination Date for the Taxpayer is June 15, 2018.*