

ATTACHMENT A – PROPOSED MODEL

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

Revised Draft (Version #3) Submitted for Consideration on September 27, 2017

SECTION A. Definitions

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

(1) “**Amended State Schedule K-1**” shall mean a form or method prescribed by [State Agency] that reports a partner’s share of adjustments to partnership-related items, and reallocations of income, expenses, gains, and losses to that partner, that arise directly or indirectly from a Partnership Level Audit.

(2) “**Composite Return Partners**” shall mean the partners in a Partnership that were included or required to be included on a [State] [composite or group income tax return] filed by the Partnership for the Reviewed Year.

(3) “**Federal Adjustments Report**” shall mean (1) an amended [State] tax return, (2) the Multistate Tax Commission’s model report of federal audit adjustments,¹ or (3) any other method or form authorized by the [State Agency]. The Federal Adjustments Report shall contain information reasonably necessary to provide the [State Agency] with an understanding of all adjustments to the Taxpayer’s federal taxable income and their impact on the Taxpayer’s [State] tax liability. The Federal Adjustments Report shall constitute the Taxpayer’s method to report additional [State] tax due, request a refund or credit of [State] tax the Taxpayer previously paid, and report any other changes (including adjustments to net operating losses) resulting from adjustments to the Taxpayer’s federal taxable income.

(4) “**Federal Partnership Representative**” shall mean the person the Partnership designates, for the taxable year, as the Partnership’s representative pursuant to IRC Section 6223(a).

(5) “**Final Determination Date.**”

(a) For adjustments to the federal taxable income of a Taxpayer arising from an audit by the IRS, the Final Determination Date shall be the date upon which all such adjustments have become final and all appeal rights under the IRC are exhausted or have been waived.

(b) In the case of a Taxpayer that is a member of a [State combined reporting group and/or State consolidated] group, the Final Determination Date shall be deemed to occur when all the adjustments to the federal taxable income of all members of the Taxpayer’s [State combined reporting group and/or State consolidated] group for the taxable year have become final, and all appeal rights under the IRC are exhausted or have been waived for each member of the group.

(c) For administrative adjustment requests filed under IRC section 6227 by a Partnership, the Final Determination Date shall be the date the Partnership filed the administrative adjustment request; all adjustments to partnership-related items, and any reallocations of income, expenses,

¹ Drafting note: It is suggested that States create different forms for corporations and partnerships to report federal adjustments.

gains, and losses among partners, shall be treated as if they were the result of a Partnership Level Audit.

(d) For bilaterally signed agreements between the IRS and the Taxpayer, the Final Determination Date shall be the date on which the last party signed the agreement.

(6) “**IRC**” shall mean 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 any applicable regulations as promulgated by the U.S. Department of the Treasury.²

(7) “**IRS**” shall mean the Internal Revenue Service of the U.S. Department of the Treasury.

(8) “**Partnership**” shall mean partnership as defined in [XXX of the State Code].

(9) “**Partnership Level Audit**” shall mean an examination by the IRS at the partnership level pursuant to Subchapter C of Title 26, Subtitle F, Chapter 63 of the IRC for which the Partnership has not made a qualifying election out pursuant to IRC Section 6221(b) and which results in adjustments to partnership-related items or reallocations of income, expenses, gains, and losses among such partners for the Reviewed Year.

(10) “**Nonresident Partner**” shall mean an individual, estate of a deceased individual, or trust that was a partner in a Partnership subject to a Partnership Level Audit during the Reviewed Year and is not a Resident Partner, Composite Return Partner, or Withholding Partner.

(11) “**Resident Partner**” shall mean an individual, estate of a deceased individual, or trust that was a partner in a Partnership subject to a Partnership Level Audit and was a resident of [State] for income tax purposes during the Reviewed Year.

(12) “**Reviewed Year**” shall mean the taxable year of a Partnership that is subject to a Partnership Level Audit and which results in adjustments to partnership-related items or any reallocations of income, expenses, gains, and losses among partners.

(13) “**State Imputed Underpayment**” shall mean the netting of all final adjustments to partnership-related items at the entity level for the Reviewed Year (excluding any reallocations of income, expenses, gains, and losses among partners), apportioned and allocated to [State] at the entity level, and multiplied by the applicable [State] income tax rate(s) as set forth in subsection C(8)(b).

(14) “**State Partnership Adjustment Report**” shall mean a form prescribed by [State Agency] that identifies the Partnership’s direct partners, each partner’s share of adjustments to partnership-related items, and any reallocations of income, expenses, gains, and losses among such partners, that arise directly or indirectly from a Partnership Level Audit.

(15) “**State Partnership Representative**” shall mean the person the Partnership designates to be the Partnership’s representative for [State] tax purposes for the Reviewed Year pursuant to subsection C(1) and shall be the Federal Partnership Representative in absence of such designation.

(16) “**[State] tax**” shall mean the [applicable State (or local) tax levied at XXX of the State Code].

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.”

(17) “**Taxpayer**” shall mean [insert State definition] and includes a Partnership subject to a Partnership Level Audit.

(18) “**Tiered Partner**” shall mean a partner that is itself a Partnership, S corporation, or other pass-through entity and that has received an Amended State Schedule K-1 pursuant to subsection C(4), C(7)(b)(iv)(A), or C(7)(b)(v)(A).³

(19) “**Unrelated Business Taxable Income**” shall have the same meaning as defined in IRC Section 512.⁴

(20) “**Withholding Partners**” shall mean the partners in a Partnership for whom the Partnership withheld or was required to withhold [State] tax for the Reviewed Year.

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

Except in the case of federal adjustments and reallocations resulting 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 direct and indirect partners using the procedures in Section C, a Taxpayer shall notify the [State Agency] of adjustments to its federal taxable income arising from an audit by the IRS or reported by the Taxpayer on a timely filed amended federal income tax return or federal claim for refund as follows:

(1) **Reporting of Federal Adjustments.** Except as provided in subsection B(2), a Taxpayer shall file a Federal Adjustments Report with the [State Agency] and, if applicable, pay the additional [State] tax owed by the Taxpayer within one hundred eighty (180) days following the earlier of: (a) the Final Determination Date, or (b) the date on which the Taxpayer filed an amended federal income tax return or federal claim for refund.

(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 federal adjustments are de minimis. The Taxpayer shall file such notice with the [State Agency] within one hundred eighty (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 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 such request to the Taxpayer within ninety (90) days following the date on which the Taxpayer filed the notice with the [State Agency].

³³ As contemplated in the introduced but not enacted Tax Technical Corrections Act of 2016 (HR 6439), the provisions of which are expected to be enacted by Congress or adopted via regulation.

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

(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 shall have sixty (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 the time prescribed in subsection B(2)(b), the Taxpayer's notice that the adjustments are de minimis will be deemed 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 deemed accepted by the [State Agency] and the [State Agency] may assess and bill the Taxpayer the fixed sum of \$250, which shall include any statutory interest and penalties.

(e) **Finality of De Minimis Adjustments.** Absent fraud, the Taxpayer shall not be subject to additional assessment, nor shall the Taxpayer 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 Section B(2)(a).

SECTION C. Reporting Adjustments to Federal Taxable Income – Partnership Level Audits

Partnerships and their direct and indirect partners shall use the procedures in this Section C to report adjustments to partnership-related items, and any reallocations of income, expenses, gains, and losses among partners, that arise directly or indirectly from a Partnership Level Audit or an administrative adjustment request filed by a Partnership under IRC section 6227, as follows:

(1) State Partnership Representative.

(a) The State Partnership Representative for the Reviewed Year shall be the Partnership's Federal Partnership Representative for the Reviewed Year unless the Partnership designates another person as its State Partnership Representative.

(b) The designation of another person as the State Partnership Representative shall be made in the manner prescribed by the [State Agency] and shall be deemed accepted by the [State Agency] unless the [State Agency] has reasonable cause and mails notice of its disapproval within fifteen (15) days following the Partnership's mailing of such notice to the [State Agency].

(c) The State Partnership Representative for the Reviewed Year shall have the sole authority to act on behalf of the Partnership with [State Agency].

(d) The Partnership and its direct and indirect partners shall be bound by any actions taken under this Section C by the State Partnership Representative.

(2) **Filing of Federal Adjustments Report.** A Partnership subject to a Partnership Level Audit shall file, within sixty (60) days of the Final Determination Date, a Federal Adjustments Report that indicates all adjustments to partnership-related items and any reallocations of income, expenses, gains, and losses among partners resulting from that Partnership Level Audit.

(3) Election for State Imputed Underpayments.

(a) **Partnership Election.** In the event adjustments to partnership-related items arising directly or indirectly from a Partnership Level Audit result in a State Imputed Underpayment for the Partnership, the Partnership shall notify [State Agency] at the time the Federal Adjustments Report is filed of its election for the Partnership to:

(i) **Partnership Pays Election.** Pay the State Imputed Underpayment on behalf of its partners and mail an Amended State Schedule K-1 to all Reviewed Year partners subject to a reallocation of income, expense, gain, and loss; or

(ii) **Partners Pay General Election.** Remit [State] tax on behalf of all Composite Return Partners and Withholding Partners, and mail an Amended State Schedule K-1 to all Reviewed Year partners; or

(iii) **Partners Pay Based on Residency Status Election.** Remit [State] tax on behalf of all Composite Return Partners, Withholding Partners, and Nonresident Partners, and mail an Amended State Schedule K-1 to all Reviewed Year partners.

(b) **Failure to Make Election.** In the event a Partnership fails to make an election pursuant to subsection C(3)(a), the Partnership shall be deemed to have made an election pursuant to subsection C(3)(a)(i).

(c) **Dissolution or Insolvency of Partnership.** Any Partnership, including a Tiered Partner, that has been dissolved or become insolvent before or during the prescribed reporting periods provided in subsection C shall be deemed to have made an election under subsection C(3)(a)(ii).

(d) **Election Irrevocable.** The election made under subsection C(3)(a) is irrevocable unless the [State Agency], in its discretion, otherwise allows.

(4) **Mailing of Amended State Schedule K-1s.** A Partnership subject to a Partnership Level Audit shall, within ninety (90) days of the Final Determination Date, mail an Amended State Schedule K-1 to its Reviewed Year partners and file a copy of such report with [State Agency] unless: (a) the Partnership has made or been deemed to have made an election pursuant to subsection C(3)(a)(i), (b) the Partnership will pay the State Imputed Underpayment on behalf of its partners under subsection C(5)(a), and (c) the Partnership Level Audit did not result in any reallocations of income, expenses, gains, or losses among partners.

(5) Reporting and Payment of Tax by Partnership.

(a) **Partnership Pays Election.** A Partnership subject to a Partnership Level Audit that has made or been deemed to have made an election pursuant to subsection C(3)(a)(i) shall, within one hundred eighty (180) days of the Final Determination Date, file a State Partnership Adjustment Report with the [State Agency] and pay the additional [State] tax owed on behalf of its partners. The [State] tax owed by the Partnership shall be determined in accordance with the provisions of subsection C(8)(b).

(b) **Partners Pay General Election.** A Partnership subject to a Partnership Level Audit that has made or been deemed to have made an election pursuant to subsection C(3)(a)(ii) shall, within one hundred eighty (180) days of the Final Determination Date, file a State Partnership Adjustment Report with the [State Agency], pay the additional [State] tax owed by Composite Returns Partners, and withhold and remit the tax owed by Withholding Partners. The [State] tax paid on behalf of the Composite Return Partners and Withholding Partners shall be determined in accordance with the provisions of subsection C(8)(b).

(c) **Partners Pay Based on Residency Status Election.** A Partnership subject to a Partnership Level Audit making an election pursuant to subsection C(3)(a)(iii) shall, within one hundred eighty (180) days of the Final Determination Date, file a State Partnership Adjustment Report with the [State Agency], pay the additional [State] tax owed by Composite Returns Partners and Nonresident Partners, and withhold and remit the tax owed by Withholding Partners. The [State] tax paid on behalf of the Composite Return Partners, Withholding Partners, and Nonresident Partners shall be determined in accordance with the provisions of subsection C(8)(b).

(d) **No Refunds or Credits.** No partner shall file an amended [State] return or take any similar action to obtain a refund of the tax paid by the Partnership on the partner's behalf pursuant to subsection C(5)(a) and any such action shall be invalid.

(e) **Assessments of Tax.** If the Partnership fails to timely pay the tax owed pursuant to subsection C(5), the [State Agency] may assess the Reviewed Year partners for their share of tax due within one (1) year from the date the Partnership's Federal Adjustment Report was filed or due, whichever is later, pursuant to subsection C(2). The [State Agency]'s assessment shall be presumed correct unless the Reviewed Year partner provides information sufficient to rebut [State Agency]'s presumption of correctness.

(6) Reporting and Payment of Tax by Partners.

(a) **General Rule.** With the exception of partners that are Tiered Partners subject to subsection C(7) and partners for whom the Partnership has already remitted [State] tax pursuant to subsection C(5)(b) or subsection C(5)(c), a partner receiving an Amended State Schedule K-1 pursuant to subsection C(4) shall, within one hundred eighty (180) days of the Final Determination Date, file a Federal Adjustments Report with [State Agency] to report additional [State] tax owed or claim a refund of [State] tax due and, if applicable, pay such [State] tax owed. The additional [State] tax owed by such partners shall be determined in accordance with the provisions of subsection C(8)(c).

(b) **Credits and Refunds.** A Composite Return Partner or Withholding Partner may file its own amended [State] income tax return within one (1) year of the date its Amended State Schedule K-1 was mailed to such partner and shall be entitled to a credit or refund of [State] income tax paid or withheld on such partner's behalf.

(7) Tiered Partnership Provisions.

(a) **Filing of Federal Adjustments Report.** If a Tiered Partner receives an Amended State Schedule K-1 pursuant to subsection C(4) and the Partnership has not made a payment of [State] tax on the Tiered Partner's behalf pursuant to subsection C(5), the Tiered Partnership shall file a Federal Adjustments Report indicating the Tiered Partner's share of adjustments to partnership-related items, and any reallocations of income, expenses, gains, and losses to the Tiered Partner, that arose indirectly from the Partnership Level Audit, within one hundred fifty (150) days from the Final Determination Date or within sixty (60) days of the date an Amended State Schedule K-1 was mailed to the Tiered Partner, whichever is later.

(b) **Application of Subsection C(3), C(4), C(5) and C(6).** Subject to the following exceptions, subsections C(3), C(4), C(5) and C(6) shall apply to Tiered Partners and their partners:

(i) **Election for State Imputed Underpayments.** Subject to subsection C(7)(b)(ii), a Tiered Partner shall make an election pursuant to subsection C(3) at the time the Federal Adjustments Report is filed pursuant to subsection C(7)(a).

(ii) **Limitation of Election for Tiered Partners.** A Tiered Partner shall be ineligible to make an election pursuant to subsection C(3)(a) and must pay the State Imputed Underpayment on behalf of its partners, as if the Tiered Partner made an election pursuant to subsection C(3)(a)(i), if the Tiered Partner received its Amended State Schedule K-1 on or after the extended due date of the audited Partnership's federal tax return for the year that includes the Final Determination Date.⁵

(iii) **Partnership Pays Election.** In the event the Tiered Partner makes an election or is deemed to have made an election pursuant to subsection C(3)(a)(i), the Tiered Partner shall file a State Partnership Adjustment Report with [State Agency] and pay the additional [State] tax owed on behalf of its partners within ninety (90) days from the date the Amended State Schedule K-1 was mailed to the Tiered Partner.

(iv) **Partners Pay General Election.** In the event the Tiered Partner makes an election or is deemed to have made an election pursuant to subsection C(3)(a)(ii), the Tiered Partner shall:

(A) Mail Amended State Schedule K-1s to its partners within ninety (90) days from the date the Amended State Schedule K-1 was mailed to the Tiered Partner, and

(B) File a State Partnership Adjustment Report with [State Agency], pay the additional [State] tax owed by Composite Return Partners, and withhold and remit the [State] tax owed by Withholding Partners, within ninety (90) days from the date the Amended State Schedule K-1 was mailed to the Tiered Partner. The additional [State] tax owed by such partners shall be determined in accordance with subsection C(8)(c).

(v) **Partners Pay Based on Residency Status Election.** In the event the Tiered Partner makes an election pursuant to subsection C(3)(a)(iii), the Tiered Partner shall:

(A) Mail Amended State Schedule K-1s to its partners within ninety (90) days from the date the Amended State Schedule K-1 was mailed to the Tiered Partner, and

(B) File a State Partnership Adjustment Report with [State Agency], pay the additional [State] tax owed by Composite Return Partners and Nonresident Partners, and withhold and remit the [State] tax owed by Withholding Partners, within ninety (90) days from the date the Amended State Schedule K-1 was mailed to the Tiered Partner. The additional [State] tax owed by such partners shall be determined in accordance with subsection C(8)(c).

(vi) **Reporting and Payment of Tax by Partners.**

(A) **General Rule.** With the exception of Tiered Partners subject to subsection C(7) and partners for whom the Partnership remitted tax pursuant to subsection C(7)(b)(iv)(B) or subsection C(7)(b)(v)(B), a partner of a Tiered Partner receiving an Amended State Schedule K-1 pursuant to subsection C(7)(b)(iv)(A) or C(7)(b)(v)(A) shall, within ninety (90) days from the date the Amended State Schedule K-1 was mailed to the partner, file a Federal Adjustments Report with [State Agency] to report additional [State] tax owed or claim a refund of [State] tax due and, if applicable, pay such [State] tax owed.

⁵ This date limitation is based upon the tiered partnership structure provisions contained in the introduced but not enacted Tax Technical Corrections Act of 2016 (HR 6439), the provisions of which are expected to be enacted by Congress or adopted via regulation.

(B) **Multiple Tiers.** If a partner of a Tiered Partner is itself also a Tiered Partner, that partner shall comply with subsection C(7).

(c) **Requests for Extensions.** A Tiered Partner may request, in writing or on a form prescribed by [State Agency], an extension of the due date of the various schedules, reports and returns due under subsection C(7) for up to an additional sixty (60) days. Such requests shall automatically be granted unless: (i) the request was filed after the applicable due date under Section C, or (ii) [State Agency] denies the request based on stated grounds of alleged tax evasion or insolvency of the Tiered Partner and the denial is mailed to the Tiered Partner within ten (10) days after its extension request was filed. If [State Agency] timely denies the request, the Tiered Partner shall have seven (7) days in which to file the applicable schedule, report or return after the date of receipt of [State Agency's] denial.

(8) **Calculation of Tax.** Additional [State] tax owed and refunds of [State] tax due shall be calculated as follows for Partnerships and their partners:

(a) **Determination of Each Partner's Share.** Each partner's share of under or over- reported [State] taxable income shall be determined as specified in the Partnership agreement in effect for the Reviewed Year, subject to any final reallocations among partners arising from the Partnership Level Audit.

(b) **Tax Paid or Withheld by Partnership.** The amount of tax paid or withheld by a Partnership pursuant to subsections C(5) or C(7)(b)(iii) shall be determined by:

(i) Netting all final adjustments to partnership-related items at the Partnership level for the Reviewed Year,

(ii) Allocating and apportioning such amounts to [State] at the Partnership level using [State's] allocation and apportionment provisions in effect for the Reviewed Year as if the Partnership was the Taxpayer,

(iii) Determining each partner's share of the adjustments to [State] taxable income in accordance with subsection C(8)(a), and

(iv) Multiplying each partner's share of the adjustment by the following [State] income tax rates in effect for the Reviewed Year:

(A) Zero (0) percent for the shares of [tax-exempt or nontaxable] partners, [with the exception of any portion attributable to Unrelated Business Taxable Income];⁶

(B) The highest [State] individual income tax rate for the shares of partners that are individuals, S corporations, trusts, estates of deceased partners, disregarded entities that are not wholly-owned by C corporations, and entities treated as Partnerships; and

(C) The highest [State] corporate income tax rate for shares of partners that are C corporations, disregarded entities wholly-owned by C corporations (including other entities taxed as such)[, and the portion of under-reported [State] taxable income attributable to Unrelated Business Taxable Income of all [tax-exempt or nontaxable] partners].

(c) **Tax Payable by Partner.** The amount of [State] tax owed by a partner shall be determined by

⁶ Drafting note: the bracketed language should be deleted here and in (C) if the state does not tax unrelated business income.

netting the partner's share of final adjustments to partnership- related items not paid by the Partnership pursuant to subsections C(5), C(7)(b)(iv)(B), and C(7)(b)(v)(B), adding or subtracting all final reallocations of income, expenses, gains or losses to that partner, and determining the increase or decrease to the partner's [State] taxable income for the Reviewed Year.⁷

(d) **Special Allocations.** The [State Agency] shall promulgate reasonable rules or regulations as it deems necessary to address special allocations among or between the partners that are affected by the Partnership Level Audit.

(e) **Calculation of Interest and Penalties.** For purposes of this Section C, the imposition and calculation of any penalties and interest imposed on any underpayment of tax shall follow the rules applicable under [insert State specific language, referencing statute, regulations, etc.].

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

The [State Agency] shall be required to issue any assessment of additional [State] tax, interest, and penalties arising directly from adjustments to a Taxpayer's federal taxable income resulting from an audit by the IRS or reported by the Taxpayer on an amended federal income tax return as follows:

(1) **Timely Reported Federal Adjustments.** If the Taxpayer files with the [State Agency] a Federal Adjustments Report or an amended [State] tax return within the period specified in Section B or Section C, as appropriate, the [State Agency] may assess any additional [State] tax, interest, and penalties arising directly from the adjustments to the Taxpayer's federal taxable income, provided that [State Agency] issues a notice of such assessment to the Taxpayer within the later of:

(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 understates the correct amount of [State] tax owed, the [State Agency] may assess any additional [State] tax, interest, and penalties arising directly from the adjustments to the Taxpayer's federal taxable income, provided that it mails a notice of such assessment to the Taxpayer within the later of:

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

(b) The expiration of the one (1) year period following the date the Federal Adjustments Report was filed with [State Agency];

(c) The expiration of the one (1) year period following the date on which the IRS, another state, or an organization representing and/or conducting audits for two or more states' tax agencies, notified the [State Agency], in writing or by electronic means, that the IRS made an adjustment with respect to the Taxpayer's federal taxable income for the taxable year; or

⁷ Drafting note: Determine language necessary for partners to apply credit for tax paid to another state by the partner directly and/or by the Partnership on the partner's behalf.

(d) 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 such a 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 shall 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 shall be 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] within one (1) year following the Final Determination Date.

SECTION F. Claims for Refund or Credits of [State] Tax Arising from 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 Taxpayer’s means 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] shall be limited to changes to the Taxpayer’s [State] tax liability arising directly from adjustments made by the IRS to the Taxpayer’s federal taxable income for that tax year.

(2) The time periods provided for in [this subdivision of the State Code] may be extended by written agreement between the Taxpayer and the [State Agency]. Any extension granted under this Section G for filing the Federal Adjustments Report shall extend 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] shall apply to any adjustments to a Taxpayer's federal taxable income with a Final Determination Date occurring on and after X [date].

Optional Model Regulation or Inclusion in Model Statute

(1) For purposes of determining when the “Final Determination Date” has occurred, all adjustments to the Taxpayer’s federal taxable income must be final, and all appeal rights under the IRC are exhausted, for the Taxpayer’s federal taxable year.

(2) 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 when 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.

(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 such a petition for redetermination or such 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 within 60 days of 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.

(a) 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 such 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.*