MULTISTATE TAX COMMISSION

TO: Members of the Partnership Work Group and the MTC Uniformity Committee

FROM: MTC Staff

SUBJECT: Partnership Work Group Staff Report

DATE: July 19, 2017

NOTE: THIS REPORT WAS PREPARED BY MTC STAFF FOR REVIEW AND DISCUSSION ONLY.

Note: Information on this project and referenced in this report is available on the MTC website at www.MTC.gov on the partnership project page.

In this report, MTC staff *begins* to address the proposal of the interested parties (ABA, AICPA, COST, TEI, and IPT—or "IPs" for short) for a uniform federal adjustments statute which includes provisions to adapt to the new federal partnership audit and adjustment regime. This report focusses on those partnership-related provisions.

This report does three things. It summarizes discussion held between the IPs and the work group during a meeting on July 6, 2017. It raises additional comments and questions based on our review. And it begins to compare the proposal's provisions with the "high" priority or "structural" issues from combined issue list (raised by both the IPs and the MTC).

This is an ongoing effort and this report should not be taken as a complete analysis of the proposal.

Summary of Discussion of July 6, 2017

1. Revisions - The IPs presented a revised version of their proposal (posted on the MTC website) and discussed the revisions (which are highlighted in red in one version posted).

2. "Pass-through" election for multi-tiered entities. Note that the IPs' proposal does not allow a "push-out" election of the state liability to partners for reporting in the current year as the federal rules do. Rather, the proposal requires a partnership that wishes not to pay the state liability to file amended K-1s for the reviewed year (requiring partners to file amended returns for those years). The proposal therefore "decouples" from the federal regime in this respect. (We refer to this as the pass-through option, rather than the push-out election, therefore.) Importantly, whether or not the IRS ultimately allows a push-out election for multiple tiered entities, the proposal would allow the pass-through option at the state level and would also allow upper-tier partnership partners to either pay their

share of the liability from the audit adjustments or file amended K-1s (that is, take the pass-through option) for their share of the liabilities.

3. Proposal applies to all adjustments—including reallocation of distributive shares. The IPs clarified that they intended the proposal to encompass all partnership-related federal adjustments, including the reallocation of partnership items between the partners. (But see further questions below.)

4. Modification period amended returns. The IPs also stated that if a partner files an amended return during the federal 270-day modification period (between the issuance of the proposed and final adjustment reports), then that partner essentially drops out of any requirements under the partnership-specific provisions of the proposal. Instead, the partner would presumably have a responsibility to file a state amended return to reflect the changes in the federal return.

There was general discussion of what might happen during the modification period and, in particular, how states would be expected to handle amended returns filed by partners to report proposed partnership audit adjustments where the state may not have any information on those proposed adjustments. There was some agreement that the states will need to be able to confirm the nature and amount of the audit adjustments on which the amended return is based and whether the IRS has accepted the amended return and modified the adjustments as part of the final adjustment report (on which the partnership's ultimate liability may be based).

It is not clear, since partners will not necessarily know that the partnership is being audited, how often it may occur that the partners would file amended returns without having some information from the partnership instructing them to do so. In that event, the partnership may be able to provide the state with the necessary information to confirm the adjustments. Also, there was some sense that because the only way for partners to "get credit" for offsetting reallocations is for all effected partners to file amended returns during the modification period, states would likely see these kinds of adjustments reported on amended returns.

5. Importance of the Federal Adjustments Report. The IPs noted that the Federal Adjustments Report (which the proposal creates and defines in Sec. (A)(2)) is an important element of how the proposal works. The idea is that the states will create a model report that can be used (along with other types of returns or reports that will qualify) to capture the necessary information in a uniform way. There would be different reports for different entities so that the report will reflect the type of information necessary for that particular entity or taxpayer.

6. The Partnership Adjustment Tracking Report. This report, created by the proposal, was also discussed. (Sec. (A)(9).) This report is designed to identify partners as necessary for state-lever reporting of federal adjustments. We expect that the IRS will need to implement something similar. The possible difference is that the states will need information on state residency.

7. Apportionment. There was some discussion on the partnership's determination of the apportionment of the federal adjustment to the state and whether this might cause issues if the partners reported on their original returns using some different method or formula. In general, the IPs expected that the partnership would use the proper method applicable during the reviewed year (and assuming a composite return was filed, the partnership would have made this determination in that year already).

8. Di minimis rule. It was suggested that there may need to a clarification as to how the $250 di minimis rule in Section B works, but that rule would not apply to partnership adjustments made by the IRS. (The issue is whether a federal adjustment that would result in a small refund might, under some reading of the provision, require the taxpayer to file and make the di minimis payment.)

9. Final determination – protection of state collection of tax. MTC staff would continue to urge states to consider whether they can ensure the likelihood of ultimate tax collection, especially where partnerships are concerned, if they take not steps to require reporting or payment of the potential tax until there is a final determination. The federal regime will require the payment of the final imputed underpayment amount if any of the adjustments are to be contested in court. Without such a mechanism at the state level, it may be years before the states will have any means to go after taxes due and unpaid. By that time, individual partners may have moved out of the state or partnerships may have liquidated their assets or become insolvent so that collection will be impossible.

10. Timeline. There was also a discussion of the timeline in the draft and the periods over which the states would allow audited partnerships and any upper tiers to file required reports. (Each tier will have its own period in which it will have to file required reports.) The IPs noted that its prior Powerpoint presentation (available on the MTC web site) contains a timeline. All acknowledged that there is some uncertainty about the overall timeline (federal and state periods) because we do not know when the internal appeals process will take place.

Additional Comments and Questions

1. Use of the term "partner" and modifiers – "direct" or "indirect" or "reviewed year." The term "partner" is not defined. We assume that when it is used by itself, it refers only to

direct current-year partners. This may need to be confirmed or clarified to avoid any ambiguity.

2. Allocation of adjustments under Section (C). While the IPs have made revisions to clarify that the adjustments taken into account will include federal adjustments to reallocate partnership items, there is still one conflict evident in Section (C)(4)(d) which says that the partner's share of under-reported taxable income is to be determined "as specified in the Partnership agreement in effect for the federal taxable year that was subject to review." But if the audit finds such allocation is improper, then this would not result in the correct allocation for state purposes. See also Section (C)(4)(f) which gives the state agency the specific authority to promulgate regulations regarding the treatment of reallocation adjustments. It is likely, however, that most states will want the agency to have general regulatory power and in that case, the direction of (C)(4)(d) is still a problem.

3. The definition of "imputed underpayment." Sec. (A)(5)'s definition presumably intends to use the partnership adjustments "made by a Partnership Level Audit" as reflected in the final determination and should probably clarify that this is the case.

4. Continuing questions about partners who amend during the modficiation period. There are still some questions about how states will treat partners who file amended returns during the modification period and this may need to be specifically addressed in the proposal (see discussion in the prior section of this report). In particular, states will need to be able to confirm both the adjustments have been reported correctly and that the IRS has modified the final federal adjustments, on which the partnership liability is based, to reflect the amended returns of those partners.

Note that under the IRS proposed regulations, there may be several categories of adjustments in any particular partnership audit. So, for example, if a particular item of partnership income is allocated only to certain partners, an adjustment to that item may be in a separate category from other adjustments. In short, the detailed partner-specific information on the adjustments made at the federal level and may be necessary for the states to verify that the state tax has been properly paid.

5. Questions about intervening years (after the reviewed year). – The federal rules provide for the partnership that elects to push out the liability to allocate the adjustments not only for the reviewed year but also related liability for tax that might result from changes in partnership attributes in the intervening years. See Sec. 6226(b)(2)(B). Since the IPs proposal instead requires the partnership to file amended K-1s for the reviewed year, how will changes in attributes be reported to the states? Presumably any tax liability would be the responsibility of the partners to report, if they amend reviewed year returns, but it is

not clear that the liabilities for the intervening year will be picked up. (Note: Staff has other questions about how any liability for intervening years would be treated at both the federal and state level if the partnership pays instead of pushing out the adjustments.)

6. Allowing multi-tier pass-through option and application of provisions to "upper-tier" partnerships (that is, partnerships that are partners in audited partnerships). The proposed IRS regulations go to some length to describe the difficulties in allowing multi-tiered entities to push-out audit adjustments. (See, for example, pages 126 – 128 of the originally published regulations, available on the MTC partnership project page.) States should carefully consider whether allowing multi-tiered structures an unlimited pass-through option, see Sec. (C)(5), is feasible. It may also be necessary to consider other administrative rules that will need to apply. For example, since these upper-tiered partnerships can choose to pay the liability at the partnership level, or pass it through using amended K-1s, do these upper-tier partnerships need to have their own partnership representative for purposes of making this state election? Is it clear how penalties and interest will be calculated in that case?

7. Designation of the state P.R. The proposal provides that the "state partnership representative" means the federal P.R. or the person the federal P.R. designates "for [State] tax purposes." Section (C)(1) provides that the federal P.R. "shall have authority to act on behalf of the Partnership with [State Agency] as the State Partnership Representative unless" the federal P.R. has "validly delegated such authority to another person." The state only has 15 days to disapprove that designation for cause. This appears to be much less power than the IRS has when determining whether a federal P.R. can properly act for the partnership and may well be insufficient for states to ensure that the state P.R. is someone that can properly act for the partnership with respect to the state. Furthermore, the state is given no authority to set rules for who can and can't be a state P.R., or what happens if the state P.R. is unresponsive or does not provide the necessary information, etc.

Furthermore, the provision states that the "Partnership and its direct and indirect partners shall be bound by any actions taken . . ." by the state partnership representative. This does not appear to be workable. First, a lower-tier partnership has no legal mechanism to force some type of agreement with an upper-tier partnership (unlike a partnership and its direct partners, which have such an agreement in order to exist). Without an agreement, it is not clear how a P.R. can really represent the upper-tier partners. Second, the lower-tier partnership is presumably not responsible for making decisions, e.g. elections, for the upper-tier partnership.

Also, because of the importance of the P.R. in this regime, it is critical not to confuse the legal rights and responsibilities of the partnership with those of the P.R. For example, it

should be the partnership's legal responsibility to file returns, not the P.R. (see Section (C)(2) and (C)(3)(a). In general, all requirements should apply to the partnership. Some requirements may also specifically apply to the P.R., but the P.R. should be authorized and responsible for acting with respect to the partnership responsibilities. Otherwise, we risk inadvertently limiting the role of the P.R. or creating ambiguities about that role.

8. Carve out for partnership level audits. Section (B) provides that "Except in the case of a Partnership subject to a Partnership Level Audit, and all direct and indirect partners thereof, a Taxpayer shall notify the [State Agency]" of any federal changes. Section (C) provides that it applies only to a "Partnership that is subject to a Partnership Level Audit and the direct and indirect partners of that entity." Both of these provisions should specify that they apply with respect to the *federal audit adjustments*. Otherwise, it would appear that they would exempt the direct and indirect partners from reporting other types of adjustments under the general rules (but would also not specifically require them to report under the partnership-specific rules).

9. Adjustments not resulting in an imputed underpayment. – Under the IPs proposal, the audited partnership is required to file amended K-1s for any federal audit adjustment that does not result in an imputed underpayment (e.g. a refund). (See Sec. (C)(2).) But it is not clear what an upper-tier partnership (a partnership that is an indirect partner in the audited partner) is required to do in that circumstance. (See Sec. (C)(5).)

Comparison of the July 5, 2017 IPs' Proposal to the Combined Issue List

The issue list below was created by MTC Staff as of 4/5/2017. In it, issues identified by the ABA/AICPA task force and the MTC have been "classified" by priority as high, low, or conditional. The list also notes the proposed method for addressing the issue—model statute or regulation. Other staff comments are also noted. "Structural" issues (highlighted) are those that will substantially affect drafting and should be addressed, as a policy decision, before drafting begins.

This version of the list compares the interested parties (IPs) proposal provided on July 5, 2017 with the issues identified as "high" priority or as "structural" issues through Item F. (See comments highlighted in yellow.)

MTC ISSUE LIST	ABA/AICPA TASK LIST	PRIORITY & METHOD	COMMENTS
A. General			
	Does the bill contain a comprehensive list of definitional terms that parallel the federal statute or incorporate them by reference?	Conditional Statute	The need for a comprehensive list of definitional terms cannot be determined until other aspects of the model are decided.

	Do the bill's filing and response deadlines parallel the federal rules, either through incorporation by reference or by listing the specific deadlines?	Conditional Statute	The precise way in which the deadlines will affect the states depends on how the model is structured.
	Is the date from which the state report must be filed tied to the issuance or occurrence of a "final determination" with respect to the federal RAR?	Conditional Statute	Whether the state "trigger" is the "final determination" will depend on whether the partners file amended returns and possibly other questions.
	Is the effective date of the bill clear? Is it tied to the federal effective date?	Low Statute	
	Does the bill grant the state DOR authority to issue interpretive regulations under the state APA?	Low Statute	
	Does the bill contemplate the proposed elections provided in the Tax Technical Corrections Act, H.R. 6439/S. 506, or its successor?	Conditional	We will have to wait to see if these changes are enacted.
B. Election Into and Out of the Partnership Level Audit & Adjustment Rules			
Federal adjustments may be made to individual or corporate partners (of partnerships that can and do elect out) or to partnerships that cannot or do not elect out. This issue list assumes that states currently have rules for addressing audit adjustments made by the IRS to individual and corporate partners.		N/A	The model should assume this is already addressed in state law.
	Does the bill provide that the state will follow a federal election to opt into the federal partnership audit rules for tax periods ending prior to January 1, 2018?	Questionable	It's not clear that states have any choice since the election has to do with how the IRS will audit the partnership.
	Does the bill provide that the state will follow a federal election to opt out?	Questionable	It's not clear that states have any choice since the election has to do with how the IRS will audit the partnership.
C. Partners Who Take Inconsistent Positions			
Again, this issue list assumes that the states currently provide rules for what individual or corporate partners must do if they are assessed additional tax by the IRS.		Assumed	The model should assume this is already addressed in state law.
D. Role and Appointment of the Partnership Representative			

Will the state recognize the role of the partnership representative with respect to state tax effects of the federal adjustment which may include: notifying the state of the federal adjustment, reporting any related state attributes (e.g., apportionment information), filing any required returns for the partners or the partnership, handling any related issues (such as any appeal of the state assessment).	Does the bill confirm that the state will accept the taxpayer's designation of a partnership representative (PR)?	High Statute	The role of the PR at the state level should be set out, but it may not affect other aspects of the model.
The IPs Proposal defines "partnership representative" in terms of the federally designated PR. (Sec. A(3).) The PR (or state PR, see below) has authority to bind the partnership and any direct or indirect partners with respect to actions taken under Section C of the proposal. (Sec. (C)(1).) Therefore, it is critical to evaluate what is included in Section C. One important action included in Section C is the filing of a Federal Adjustments Report indicating the partnerships taxable income (from the adjustments) apportioned to the state.			
Will the state allow the partnership to designate a partnership representative different than the PR designated for federal purposes?	Does the bill allow the partnership to designate a PR who is different from the PR designated for federal income tax purposes (e.g., a state-specific PR)?	High Statute	The role of the PR at the state level should be set out, but it may not affect other aspects of the model.
The proposal allows the federal PR to designate a state PR. (Sec.s (A)(13) and (C)(1).) This provision states that the state PR is either the federal PR or the person that PR designates. (See discussion in the second section of this report, item 7, above.)			
The state may also want to consider whether a nonresident or out-of-state partnership representative will be allowed to act on behalf of a resident partner in a case where the partnership itself is not doing business in the state.	Does the bill confirm that a nonresident or out-of-state PR can act on behalf of a partnership in a case where the partnership itself is not doing business in the state at the time?	High Statute	The role of the PR at the state level should be set out, but it may not affect other aspects of the model.
It does not appear that the proposal addresses this specific issue.			
	Does the bill impose any additional restrictions or limitations on who can serve as the PR?	High Either	
No. This may be a problem for states when it comes to the state PR. (See discussion in the second section of this report, item 7, above.)			
	Does the bill specify a process and time period to notify the state if the PR (or state PR) is changed?	Low Regulation	This is an administrative issue.
E. Effect of an Adjustment that Does Not Result in an Imputed Underpayment			
Will the state recognize this kind of adjustment as being properly recognized in the adjustment year	Does the bill recognize a federal audit adjustment that doesn't result in an underpayment as	High Statute	Since these adjustments will be reported in the adjustment year, rather than in amended

(rather than the reviewed year). If so, this may require a mechanism to ensure that there is no "double-counting" of tax reductions. If not, there will be differences in partnership attributes and partner basis for state and federal tax purposes. Will the partnership in that case need to provide state level information returns showing the effect of the adjustment on the state taxes for the partners in the adjustment year? (Will any apportionment of the adjustment be made in the adjustment year in that case?) Will the state's existing RAR statute cover this situation (see below)?	being properly recognized in the adjustment year (rather than the reviewed year)? If so, does the bill contain a mechanism to ensure that there is no double-counting of tax reductions? If not, does the bill address the potential difference in partnership attributes and partner basis for state and federal tax purposes, i.e., will the partnership need to provide state level information returns showing the effect of the adjustment on the state taxes for the partners in the adjustment year? (Will any apportionment of the adjustment be made in the adjustment year in that case?) Does the bill, or the state's existing RAR statute, address this situation?		reviewed year returns, it will be necessary for the states to make clear that they will follow the federal treatment.
The proposal requires that such adjustments be reported through an amended schedule K-1 for the reviewed year. (But see discussion in the second section of this report, item 9, above.			
F. Calculation of the State-Level Imputed Underpayment of Partnership Tax			
Assuming the state will also need to calculate an amount that may have to be paid by the partnership, the issues for the state will include the manner in which a multistate partnership will be allowed to apportion the imputed underpayment for state purposes. Does the answer to this question depend on whether the state was the residence of affected partner(s) who therefore would be required to report 100% of the partnership income and take a credit for taxes paid to other states? If apportioned, what year's apportionment factors will be used to apportion the imputed underpayment? Can a state constitutionally require the use of adjustment year factors rather than reviewed year factors?	Does the bill address the manner in which a multistate partnership will be allowed to apportion the imputed underpayment for state purposes? If so, does the apportionment method depend upon whether the state was the residence of affected partner(s) who therefore would be required to report 100% of the partnership income and take a credit for taxes paid to other states? Does the bill confirm that the reviewed year's apportionment factors will be used to apportion the imputed underpayment?	High Statute	There are important policy questions concerning apportionment.
The proposal does not specifically address this issue.			

Will the state allow the partnership to use the apportionment factor in the originally-filed return as opposed to re-computing the factor, for purposes of administrative ease?	Does the bill allow the partnership to use the apportionment factor in the originally- filed return as opposed to re-computing the factor, for purposes of administrative ease?	High Statute	This seems a straight-forward issue once other apportionment issues are decided.
The proposal uses the reviewed year apportionment factor – but not necessarily the original one used on any return filed in that year. See Sec.s (A)(5) and (C)(6).			
What tax rate will apply at the state level, especially if there are state income tax-exempt entities (which may not coincide with the federal definition or are subject to a non-income based tax regime such as insurance companies or banks) or partners with lower state tax rates? (See also next section.)	Does the bill address the tax rate that will apply at the state level, especially if there are state income tax-exempt entities (which may not coincide with the federal definition or are subject to a non- income based tax regime such as insurance companies or banks) or partners with lower state tax rates? If the state calculates the imputed underpayment for state purposes in a manner similar to the federal calculation, does the bill allow the partnership to show that the tax rates of certain partners are lower than the highest applicable state rate or that certain partners are exempt from state income tax to lower the state imputed underpayment amount?	High Both	While the tax rate is a state-specific issue, the treatment of tax exempt partners will need to be addressed in the model. Some aspects may be better addressed by statute—others by regulation.
See Sec. (C)(4)(a) of the proposal.			
G. Modification: Partnership Response to Proposed Audit Adjustment and "Pay Up" Election			
States currently provide requirements for taxpayers who file amended federal returns to file amended state returns. Presumably, the amended returns filed for this purpose would also trigger a state-filing requirement.	Does the bill (or the state's RAR statute) address whether amended federal tax returns filed by reviewed year partners trigger a state amended return filing requirement?	Assumed	The model should assume this is already addressed in state law.

Will the state require any other information from the partnership in a case where the partners file amended state returns in response to a proposed federal audit adjustment?	Does the bill address whether the state will consider other information that might affect the final audit adjustment amount at the state level? If so, is that information identified, or is the state DOR granted regulatory authority in this regard?	High Both	
If a partnership elected to file a composite return, will partners be allowed to file separate amended returns or will the partnership have to file an amended composite return? If the latter, will the partners who are included be relieved of filing individual amended returns?	Does the bill contain a filing mechanism for amended returns if a partnership elects to file a composite return, i.e., will the partners be allowed to file separate amended returns or must the partnership file an amended composite return?	Low Either	The model will have to assume that some states allow a composite return and some states do not.
If the state calculates the imputed underpayment for state purposes in a manner similar to the federal calculation (see above) then will the state also allow the partnership to show that the tax rates of certain partners are lower than the highest applicable state rate or that certain partners are exempt from state income tax?	(See prior section.)	High	
Will the state conform to the federal pay-up election and allow the partnership to reduce its state tax liability related to the federal adjustments for reviewed year partners who file amended returns/pay tax?	With respect to the pay-up election, does the bill require a reduction in state tax liability for the partners who file amended federal as well as state returns and pay the tax and interest?	High Statutory	This is a structural issue.
Similarly, can a partnership reduce its federal imputed underpayment by presenting information to the IRS to reduce the final audit adjustment amount, but choose not to do so for a particular state, thereby causing the partnership to remain liable for the full amount of the state tax?	Does the bill permit a partnership that reduces its federal imputed underpayment by presenting information to the IRS, to elect not to do so for state tax purposes, thereby causing the partnership to remain liable for the full amount of the state tax?	High Statutory	This is a structural issue.
Will the state allow a state level pay-up election if the partnership did not make a federal pay-up election, so that certain partners will file a state amended return and pay the state tax but will not file a federal amended return? If this is allowed, will it be allowed where all partners do not file state amended returns and pay the state tax?	Does the bill permit a state-level pay-up election if the partnership did not make a federal pay-up election, so that certain partners will file a state amended return and pay the state tax but will not file a federal amended return? If this is allowed, will it be allowed if all partners don't file state	High Statutory	This is a structural issue.

	amended returns and pay the state tax?		
Will the state require that the reduction be made for state purposes only for the partners who file amended state returns, as well as federal returns? Will the state require the partnership and, if applicable, the partners, to file information returns disclosing the federal proposed audit adjustment (including the underlying issues) and demonstrate that the amended returns filed for state purposes take these issues into account?	Does the bill or the current RAR statute require the partnership and, if applicable, the partners, to file information returns disclosing the federal proposed audit adjustment (including the underlying issues) and demonstrate that the amended returns filed for state purposes take these issues into account?	High Both	
Will the state require some showing that the IRS has allowed the amended returns in order to reduce the state-level proposed audit adjustment?	Does the bill require a showing that the IRS has accepted the amended returns in order to reduce the state-level proposed audit?	Low Regulation	It seems the IRS proposed regulations will require this in any case.
Assuming state law requires the partners to file a state amended return if they also file a federal amended return, in what way will the partnership need to prove that a state amended return was indeed filed?	Does the bill address how the partnership may prove that a state amended return was filed?	High Regulation	
Will partnerships be allowed to file composite returns for purposes of the pay-up election?	Does the bill allow a partnership to file a special composite return for purposes of the pay-up election?	Low Statute	The model will have to assume that some states allow a composite return and some states do not.
If some amount of the federal proposed audit adjustment remains, will the state accept the federal reductions in that amount as the basis for any remaining partnership assessment?	Does the bill address whether the state will accept the full amount of the federal reductions as the basis for any remaining partnership assessment, if some amount of the federal proposed audit adjustment remains unpaid?	High Statute	This issue is closely related to other structural issues.
	Does the bill conform to the I.R.C. § 6225 pay-up election/deadlines and allow the partnership to reduce its state tax liability related to the federal adjustments for reviewed year partners who file amended returns/pay tax?	Low Statute	
H. "Push-Out" of the Final Partnership Audit Adjustment			
Will the states allow a partnership that is itself a partner of the audited partnership to push-out the state adjustment to lower-tier partners if	Does the bill allow a partnership that is itself a partner of the audited partnership to push-out the	High Statute	This is a structural issue.

that is elected for federal tax purposes under Sec. 6226(b)?	state adjustment to lower-tier partners if that is elected for federal tax purposes under I.R.C. § 6227(b)?		
Will the state allow the partnership to push out the state tax amount related to the federal audit adjustments if the partnership makes a federal push-out election? If so, will the state require the partnership to provide additional state-related information (such as apportionment information) so that the state tax owed by the partners can be properly calculated? Will the relevant apportionment information be that related to the reviewed year (and subsequent years) in order to avoid constitutional concerns? How will the state handle the partner who was a state resident in the reviewed year but is now a nonresident or no longer a partner? And vice versa? What jurisdictional issues are presented?	If the IRS allows the push-out of the partnership audit adjustments as adjustments that each partner would recognize and be taxed on separately, does the bill allow the partnership to push-out the state tax amount related to the federal audit adjustments if the partnership makes a federal push-out election? If so, does the bill require the partnership to provide additional state-related information (such as apportionment information) so that the state tax owed by the partners can be properly calculated? Does the bill provide that the relevant apportionment information is related to the reviewed year (and subsequent years)?How does the bill address a partner who was a state resident in the reviewed year but is now a nonresident or no longer a partner? And vice versa? (Does the bill address the "moving partner" circumstance, in which a partner was a resident of the state during the reviewed year, but not in the adjustment year?)	High Statute	These issues will be important assuming the state follows the push-out election.
If the state normally requires withholding for nonresident partners, will the state require the partnership to withhold on nonresident partners for their tax liabilities?	If the state normally allows or requires withholding for nonresident partners, does the bill require the partnership to withhold on nonresident partners for their adjusted state tax liabilities?	Low Statute	
If the state normally allows or requires a composite return for nonresident partners to be filed by the partnership, will it allow an amended composite return, or a current year composite return that includes reviewed year adjustments, in this situation? What jurisdictional issues are presented?	If the state normally allows or requires a composite return for nonresident partners to be filed by the partnership, does the bill allow an amended composite return, or a current year composite return that includes reviewed year adjustments?	Low Statute	The model will have to assume that some states allow a composite return and some states do not.

Will states permit partnerships to file withholding or composite returns for resident partners or will they each be required to file amended returns? If they are allowed to be included, how will their liability be computed?	Does the bill permit a partnership to file a special withholding or composite return for resident partners or will they each be required to file amended returns? If they are allowed to be included in a composite return, does the bill specify how their liability will be computed?	Low Statute	The model will have to assume that some states allow a composite return and some states do not.
Can the composite return include corporate partners who were not included on the originally filed composite return? If they are allowed to be included, how will their liability be computed?	If the bill permits a partnership to file a composite return, does the composite return include or permit corporate partners? What if they were not included on the originally filed composite return?	Low Statute	The model will have to assume that some states allow a composite return and some states do not.
If the partnership elects to push out the federal adjustments, will the state allow it to pay the state-related tax at the partnership level, without pushing that liability out to the partners? In other words, if a federal push-out election is made, will the state allow the partnership to opt-out of that election for a particular state and remain liable for the tax?	If the partnership elects to push out the federal adjustments under I.R.C. § 6226, does the bill allow the partnership to pay the state-related tax, etc. on behalf of the partners, without pushing that liability out to them?	High Statute	This is a structural issue.
Conversely, if a partnership does not make a federal push-out election, may it nevertheless do so at the state level? Under what conditions?	Conversely, if a partnership does not make a federal push-out election, does the bill permit it to make a state-level push-out election? If so, under what conditions?	High Statute	This is a structural issue.
I. Treatment of Partnership Payment of Tax			
Most states do not have the statutory authority to impose liability at the partnership level, so the state may need to enact new law allowing for this.	Does the bill amend the state income/franchise tax levy statute to make partnerships subject to the state income/franchise tax on IRS partnership audit adjustments? Does the bill, or existing state law, allow for partnerships to make tax payments on behalf of their partners?	High Statute	This is a structural issue.
If the state allows the partnership to pay the state tax related to the federal adjustments, how will the state provide for apportionment of that liability when there are resident partners in the state (who would otherwise pay tax on 100% of their partnership income and claim a	If the state allows the partnership to pay the state tax related to the federal audit adjustments under the push out method, how does the bill provide for apportionment of that liability when there are resident partners in the state	High Statute	There are important policy questions concerning apportionment.

credit for other state taxes paid)?	(who would otherwise pay tax on 100% of their partnership income and claim a credit for other state taxes paid)?		
If the partnership pays the state taxes in other states due to the audit adjustments, will resident partners be entitled to take any credit for taxes paid by the partnership against their own taxes and how will this be computed and shown?	If the partnership pays on behalf of partners, does the bill provide that partners will be entitled to credit for the tax paid by the partnership? If so, does the bill address how the credit will be applied?	Low Statute	This issue will depend on other decisions.
If the partnership apportions the tax, would it use the reviewed year apportionment factors rather than those of the adjustment year (in which the tax would be reported and paid for federal purposes). Would using adjustment year factors be constitutionally permissible?		Low Statute	(This issue is already addressed elsewhere.)
If the partnership pays some or all of the federal adjustment, will that tax payment be treated by the state as a deductible or a creditable tax for the partners?	If the partnership pays the state taxes in this or other states due to the federal audit adjustments, does the bill clarify that resident partners are entitled to take a credit for income taxes paid by the partnership against their own resident state taxes? If so, how will this be computed and shown? Does the bill allow residents a credit for non-traditional income taxes paid to other states on an imputed underpayment as a result of the IRS audit (e.g., Ohio, Texas, Tennessee, etc.)?	Low Statute	This issue will depend on other decisions.
	Does the bill address whether a partnership paying the state share of the imputed underpayment does so on an amended reviewed year return, or as an adjustment on the adjustment year return?	Low Statute	This issue will depend on other decisions.

	Does the bill address the "moving partnership" circumstance, in which a partnership that was doing business in or otherwise taxable by a state during the reviewed year but was not doing business in or otherwise taxable in that state during the adjustment year or vice versa?	Low Statute	
J. Statutes of Limitation, Penalties & Interest			
Does the state have the authority to impose penalties and interest under this system depending upon whether: the partners filed amended returns, the partnership pushes out the final adjustments to the partners, or the partnership pays the unreduced amount of the final imputed underpayment? Does the state have the authority to assess under existing statutes of limitation, either against the partnership or the reviewed year partners, where the final audit adjustment is issued to the partnership and the tax due is required to be paid in the year of adjustment? For example, does the existing RAR statute allow the state to assess tax against a partnership as a result of a federal audit adjustment? Is the state's authority under its existing RAR statute limited to a review/adjustment of the items adjusted by the IRS in the RAR?	In states that have factor presence nexus standards, if an imputed underpayment causes the partnership to have bright line nexus in a state for the first time, does the bill provide for an automatic abatement of penalties for late-filing, etc.? Does the bill include specific provisions for calculating penalties and interest on the tax ultimately due and also provide a specific statute of limitations?	Low Statutory	
K. Administrative and Other Provisions			
Will the partnership/partners have to separately appeal or challenge the state-related taxes if the federal adjustment is appealed? If so, does the existing appeal process contemplate such an appeal?	Does the bill address whether the partnership/partners must separately appeal or challenge the state-related taxes if the federal adjustment is appealed? If not, does the existing appeal process contemplate such an appeal? Does the bill allow the partnership or partners to challenge the state assessment if the federal assessment is not being challenged?	Low Statutory	

If any adjustments relate to reallocated amounts between partners, which would reduce certain partners' taxes (assuming the partnership elects to push out the adjustments), how will the state provide for refunds of state-related taxes?	If any adjustments relate to reallocated amounts between partners, which would reduce certain partners' taxes (assuming the partnership elects to push out the adjustments), does the bill provide for refunds of parallel state-related taxes?	High Statutory	
L. Other Apportionment Issues			
Within the confines of the existing RAR statute, or under the normal statute of limitations, can a state make a change to apportionment factors where the federal adjustment might have some effect on apportionment?		Low Statutory	
N. Other State Tax Collection Issues			
Should the state provide that the partnership and partners are jointly and severally liable to the extent the liability is assessed and to be collected from the partnership?		Low Statutory	