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by Bruce P. Ely and William T. Thistle II

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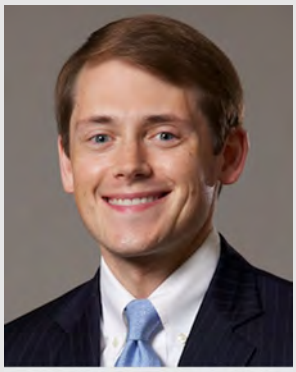

William T. Thistle II

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In this edition of From the SALT Minds, Ely and Thistle provide an update on how the new federal partnership audit regime is being addressed at the state level, including an analysis of a draft model statute that's been advanced by a coalition of business and professional organizations. The views and interpretations offered in this column are purely those of the authors and not necessarily those of their law firm or other organizations with which they are affiliated.

In our January column we summarized the new centralized federal partnership audit regime (CPAR) which generally applies to tax years beginning after December 31, 2017, and the initial responses by various business groups, practitioner groups, and the Multistate Tax Commission.[1] Much has transpired since then, although the rubber will really meet the road next spring, when state legislatures consider legislation to ideally conform to the federal regime while making the state reporting of the anticipated federal partnership audit adjustments more streamlined for multistate taxpayers.

For purposes of this article, we will assume our readers have a basic working knowledge of the CPAR established by the Bipartisan Budget Act of 2015 (BBA), as amended by the Protecting Americans From Tax Hikes (PATH) Act of 2015, and the repeal of the partnership audit rules created under the Tax Equity and Fiscal Responsibility Act of 1982.[2] Earlier this year, many predicted these rules would be delayed a year due to congressional inaction on the Tax Technical Corrections Act of 2016 (S. 3506 and H.R. 6439) and the withdrawal of the U.S. Department of Treasury's proposed regulations implementing the BBA provisions.[3] But based on our intel and that of the American Institute of CPAs, a delay is now unlikely. Reissuance of the Treasury's 277 pages of preamble and proposed regulations, the September 18 hearing on these proposals, and public statements by Treasury officials make the chances of a delay slim.

[1] Bruce Ely and William Thistle, "MTC, Business Groups Respond to Federal Partnership Audit Rules," *State Tax Notes*, Jan. 9, 2017, p. 215.

[2] For a few of our favorite articles on the new federal partnership audit rules, *see* Carol Kulish Harvey, et al., "New Partnership Audit Rules — What We Know So Far, Part 1," *Tax Notes*, Aug. 8, 2016, p. 829; Harvey, et al., "New Partnership Audit Rules – What We Know So Far, Part 2," *Tax Notes*, Aug. 15, 2016, p. 991; and Warren Kean, "What to Know and Do About the New Partnership Audit Rules Now," *Tax Notes*, July 24, 2017, p. 471.

[3] *But see* Nathan J. Richman, "Much-Anticipated Proposed Partnership Audit Regs Rereleased," *Tax Notes Today*, June 14, 2017.

This article will focus chronologically (more or less) on the new rules' state tax aspects. Thankfully, only one state legislature — Arizona's — has enacted legislation attempting to conform its state income tax rules to the corresponding federal income tax changes. As part of a periodic federal conformity update bill, Arizona conformed to some federal provisions and chose a different path on others. As noted in our earlier article, Arizona's initial attempt at drafting conformity rules highlighted various problems and provided a useful case study for those of us reviewing other states' income tax statutes and assessment procedures for future revisions.[4]

The example we provided involved a multistate partnership doing business in Arizona that received a notice of proposed adjustment for a prior year — and elected at the federal level to push out the final adjustments to its reviewed-year partners. Under the federal rules, partners in the reviewed year (regardless of whether they are also adjustment-year partners) will be required to take their share of any adjustments into their current (adjustment) year federal tax returns with no amendment to the prior reviewed-year returns required. Apparently, the BBA drafters viewed this as an effort to streamline the process while shifting the liability to the beneficiaries of the deduction, credit, special allocation, etc., that was disallowed on audit. Arizona chose a different path — requiring the reviewed-year partners, even in the context of a push-out election, to file amended Arizona state returns for their reviewed years. This option will be discussed further below. Moreover, the Arizona legislation introduced timing problems through mismatched notice and filing deadlines, particularly in the context of a push-out election. As readers will sense from this legislation and the discussions below, many states are simply not enamored with conforming to the federal push-out election.[5]

In response to the Arizona law, and in hopes that other states would adopt uniform legislation that (a) generally conforms to the federal partnership audit regime and (b) establishes a uniform revenue agent report (RAR) adjustment procedure, several professional and business organizations formed a working group that the MTC refers to as the "Interested Parties." The Interested Parties include the Council On State Taxation, the Tax Executives Institute, AICPA, the American Bar Association Section of Taxation State and Local Taxes Committee's Task Force on the State Implications of the New Federal Partnership Audit Rules, and the Institute for Professionals in Taxation (IPT).

Last October, the Interested Parties submitted informal recommendations to the MTC staff and its Partnership Work Group, chaired by Tracee Abel of the Montana Department of Revenue.[6] In response, the MTC Partnership Work Group published its own comprehensive memorandum, which we also commend to our readers.[7]

During these deliberations, five state legislatures considered proposed conformity legislation, with four rejecting or indefinitely postponing legislation soon after its introduction. Exacerbating the nonuniformity, each bill had a different approach and none were as comprehensive as the draft model statute discussed later in this article.

The Montana Legislature was the first to entertain conformity legislation (H.B. 47) during its 2017 session.[8] At the behest of the Montana Society of CPAs, ABA Task Force members, and other groups, the Montana House Taxation Committee — following an initial hearing on the bill — tabled it until there was clarification in the BBA provisions and finalization of Treasury regulations.

Minnesota H.F. 1227, introduced February 15, was limited to partnerships that opted in early to the new federal audit regime and would have only been effective for taxable years before 2018. Nevertheless, House and Senate taxwriting committees were likewise convinced to table the bill until next year at

[4] For an excellent analysis of Arizona's partnership audit regime, *see* Marianne Evans, et al., "New Partnership Audit Rules Create State Tax Issues," *State Tax Notes*, Oct. 4, 2016, p. 955.

[5] *See* Amy Hamilton, "States Should Skip IRS's Partnership Audit Regime's 'Push-Out' Election," *State Tax Notes*, Oct. 3, 2016, p. 25; and Hamilton "MTC Partnership Audits Work Group to Delve into Federal Push-Out Election," *State Tax Notes*, Nov. 21, 2016, p. 574.

[6] A copy of the Task Force's Memorandum discussing the state implications of the federal partnership audit rules is available.

[7] A copy of the MTC Partnership Work Group's state issues memorandum is available. The Group maintains an excellent website with a wealth of information on the issues.

[8] *See* Tripp Baltz, "Montana Committee Postpones Federal Partnership Audit Bill," *Daily Tax Report*, Feb. 7, 2017, at p. H-4. Thanks to Eileen Sherr of the AICPA and Catherine Stanton of Cherry Baekert LLP of Bethesda, Maryland for allowing us to review a draft of their upcoming article on this subject to be published in the December 2017 issue of *The Tax Adviser*.

the behest of the Minnesota Society of CPAs, ABA Task Force members, and others.

Similarly, the Georgia House Ways and Means Committee considered H.B. 283, introduced on February 16, but soon reported out a substitute bill lacking the partnership audit provisions. Again, thanks to the coordinating efforts of the AICPA, the Georgia Society of CPAs, and several Atlanta law and accounting firms who assisted the ABA Task Force in educating committee members, those provisions were tabled. However, the revenue commissioner quickly established a task force to study and recommend conforming legislation next spring.

Unlike its counterparts, Missouri S.B. 521, introduced March 1, provided that a partnership that is audited by the IRS and is assessed an imputed underpayment cannot make a push-out election and must itself pay Missouri income tax on the adjustment. With the usual cast of characters, the Missouri Senate was convinced that the bill should be tabled.

In the meantime, several key California legislators and members of the Franchise Tax Board have been considering how to address the federal partnership audit rules. On February 3, Nikki Dobay of COST spoke to several of these individuals as part of the Sacramento Delegation.[9] The members of the FTB working group were eager to engage with the Interested Parties and have provided helpful feedback on the model. Dobay continues to be our point person in that effort. During the February 3 presentation, Bruce Langston, Director of the FTB Technical Resources Bureau, echoed the concerns of several other states regarding the ability of the partnership to push-out the assessment to the reviewed year partners and the FTB's corresponding inability to collect all the tax in this circumstance. He concluded that "the concern is that the state does not want to be caught if we actually need legislation to assess at the partnership level, yet we want to wait" until the federal rules are clear.[10] As of the date of submission of this article, no legislation has been introduced in the California General Assembly, but that is certainly being contemplated at the request of several key legislators.

On June 8, the Interested Parties informally shared their draft model bill, the Uniform Statute and Regulations for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments, with the MTC's Partnership Work Group.[11] The principal authors of the so-called model statute were Dobay and Fred Nicely of COST, Pilar Mata of TEI, Jonathan Horn of the AICPA, and the authors of this article. The authors (representing the Interested Parties), Dobay, Nicely, and Mata also presented the proposed legislation at the annual meetings of the National Conference of State Legislatures and the Federation of Tax Administrators. An August 3 presentation to the MTC Uniformity Committee in San Diego was followed by the committee (thankfully) voting to use the draft model statute as the starting point in its own drafting efforts toward model legislation.[12]

Since then, varying combinations of the coauthors have surveyed the proposed legislation for other groups, including the Southeastern Association of Tax Administrators, the Midwestern States Association of Tax Administrators and the Western States Association of Tax Administrators' annual meeting in Missoula, Montana. Further presentations are scheduled for the annual Paul Hartman/Vanderbilt SALT Forum in Nashville, COST's annual meeting in Orlando, Florida, and the New York University Institute on State and Local Taxation in early December.

In the meantime, the AICPA has developed and circulated to its state society members a "Position Paper on State Conformity to Federal Partnership Audit Rules" and, in the same month, a related issue paper, "Position Paper on RAR (Revenue Agent's Report) — Reporting to State Authorities of Federal Tax Examination Adjustments, and Their Effect on State Tax Liability."[13] The AICPA presented its RAR position paper to the MTC Uniformity Committee on March 8, while encouraging state CPA societies

[9] The Sacramento Delegation is a symposium organized by the Tax Section of the California Bar Association, during which practitioners are provided the opportunity to submit white papers and present to key members of the Assembly and Senate Finance Committees of the California Legislature, as well as legal counsel of the FTB and SBE.

[10] Laura Mahoney, "Wait for Federal Partnership Audit Rules, California Advised," *Daily Tax Report*, Feb. 7, 2017, p. H-1.

[11] *See* Jennifer McLoughlin, "Parties Unveil Model State Statute for Partnership Audit Law," BNA *Daily Tax Report*, June 9, 2017.

[12] *See* Hamilton, "MTC Work on Partnership Audits to Start With Industry RAR Model," *State Tax Notes*, Aug. 7, 2017, p. 544.

[13] A copy of the position paper is available. The AICPA's website is an excellent resource for this and many other topics.

to work with state policymakers to adopt guidelines and procedures to provide taxpayers with certainty and consistency. The AICPA RAR paper endorses the proposed model statute, including draft model RAR legislation, as discussed below. In doing so, the AICPA properly emphasizes that there is no consistent method for reporting federal tax examination adjustments to state taxing authorities, and that disconformity will be exacerbated because of the increased IRS audits resulting from the implementation of the CPAR.[14]

Analysis of Draft Model Statute

As noted, the model statute is the work of the Interested Parties, but negotiations are underway to find common ground with the MTC and various states to jointly finalize and advocate a uniform model act that will be embraced by the states, practitioners, and multistate business organizations. Thus, the summary of the model statute is subject to change.[15]

As of this writing, the model statute is a work in progress. The version attached to this article as an appendix is the most current version, and we commend everyone's reading.

The model statute includes some key definitions that parrot the federal definitions in the CPAR and some that are state-specific. For example, the authors determined that the Federal Adjustments Report (FAR) — to be used by taxpayers in reporting federal audit adjustments — should contain specific, basic information, but it could take the form of an amended state income tax return, the MTC's model report of federal audit adjustments, or another method or form authorized by a state agency. The FAR would constitute the taxpayer's method of:

- reporting additional state income tax due;
- requesting a refund or credit of state tax previously paid; or
- reporting any other changes (including adjustments to net operating losses) resulting from adjustments to the taxpayer's federal taxable income by the IRS.

Another state-specific form is the Partnership Adjustment Tracking Report, which would be prescribed by these state agencies but must conform with the form promulgated by the U.S. Treasury Department. The primary goal is to identify all of the partnership's partners and their allocable share of the federal audit adjustments.

As Marilyn Wethekam recently noted, no two state RAR statutes are alike. One of the model statute's goals is to address that concern, including a uniform definition of a final determination date and, as a general rule, an 180-day grace period for taxpayers to file state amended tax returns or the like.

In general, the taxpayer would be required to notify a state of a federal change (because of an audit or otherwise) within 180 days of the final determination date or the date of the amended federal income tax return, but this rule would not apply to a partnership-level audit by the IRS under the new partnership audit provisions. A separate section of the model statute deals with federal partnership audits and a resulting imputed underpayment of tax to the state. In the latter case, the partnership would be required to file a FAR within 60 days of the partnership's final determination date to notify the state of the partnership's correct taxable income apportioned to the state. Simultaneously, the partnership would be required to make an election whether it or its partners[16] would pay the state tax and related interest.

The model statute provides three options to the partnership (and its state partnership representative), none of which are tied to an equivalent federal election:

The partnership pays the state tax for all partners (that is, an entity-level tax). If the "pay up" election is made, the partnership would have 180 days to file the schedule and pay the tax due to the state. As with the federal rule, the partnership could

[14] Marilyn Wethekam, "Timing Is Everything — Reporting of Revenue Agents Reports," *State Tax Notes*, July 17, 2017, p. 259.

[15] For a timely analysis of state tax administrators' concerns regarding partnership taxation, generally, and the issues faced by the states in addressing the BBA rules, *see* Helen Hecht and Lila Disque, "A State Tax Administrator's Perspective on Partnership Taxation," 27 *J. Mult. Tax. & Incent.*, Vol. 27, No. 5 (Aug. 2017). A special thanks to MTC General Counsel Helen Hecht for the literally hundreds of hours she has devoted to this project, and for her efforts to work with us toward common goals.

[16] To clarify, these elections only apply regarding partners that were not included on an original or amended state composite return or subject to nonresident partner withholding for the reviewed year. The partnership must pay the imputed underpayment of state tax on behalf of all partners that were included on a composite return or subject to withholding, within 180 days of the final determination date.

reduce its tax liability by documenting that it has tax-exempt or nontaxable partners. Otherwise, the partnership would pay the applicable highest state individual income tax rate or the highest state corporate income tax rate on the assessment, together with statutory interest, if applicable.

The resident partners (and some nonresident partners) pay the state tax under a state push-out election, while nonresident partners subject to composite return or withholding obligations have the tax paid for them. In that event, the partnership would issue state Schedules K-1 and push out the payment only to those persons or entities who were resident partners during the reviewed year, consistent with the federal push-out election. Note, however, that the current version of the model statute is not dependent on the partnership making a federal push-out election. In the event a state push-out election is made, the partnership would have 90 days to mail amended state Schedules K-1 to the resident partners and to the state. Those partners would have 180 days from the final determination date to file a FAR and pay the state tax due.

The partnership pays the state tax on behalf of *all* nonresident partners while pushing out the liability to those who were partners during the reviewed year and who are currently residents of that state. This is aptly called the hybrid approach. Under this election, the partnership would be required to file — within 120 days of the final determination date — a schedule with the state indicating each nonresident partner's share of the underreported taxable income and pay the additional tax at the highest applicable income tax rate. Resident partners, on the other hand, would be required to file a FAR and pay any additional income tax within 180 days of the final determination date.

Correspondingly, a state could issue an assessment for additional income tax within the later of:

- one year following the date the FAR was filed;
- one year following the date when the IRS, another state revenue agency, or an organization representing or conducting audits for two or more states (for example, the MTC) notifies the state in writing or electronically of the federal audit adjustments; or
- the expiration of the general statute of limitations.

However, if there is proof of a substantial understatement, not including fraud, then the statute of limitations for these assessments would be extended to six years.

The model statute would also allow taxpayers to make estimated state tax payments during an ongoing federal audit, which the authors view as a win-win for taxpayers and states. The model statute makes it clear that state adjustments are limited to the adjustments made by the IRS. In other words, the receipt of federal partnership audit adjustments doesn't allow a state to reopen the normal statute of limitations for all issues, as some states are prone to attempt.

Conclusion

In light of the BBA changes, most tax practitioners expect a dramatic increase in the audit rate for partnerships for post-2017 tax years, especially those that did not or could not opt out. We should notify our subchapter K clients not only to remind them of the advent of the new rules, but to emphasize the need to review their partnership or operating agreements before year's end; to select a qualified, competent partnership representative; and to review the ownership structure of the entity. If the partnership wants to opt out of the new CPAR, it cannot have even one ineligible partner, and that includes (at least for now) a single-member limited liability company or even a grantor trust. The ownership of these entities may need to be reorganized before December 31.

At the same time, practitioners should be working with state bar tax sections, CPA societies, and state taxing authorities to pass the model statute in one form or fashion as soon as next spring. One can expect prefiled bills before the end of 2017, so time is short.

Finally, we practitioners should be monitoring federal developments, particularly the finalization of the proposed regulations, but also the much-needed tax technical corrections bill that could be quietly tacked on to a revenue or spending bill and passed with little fanfare. Coupled with looming federal tax reform, the next year or so will be busy for passthrough entity aficionados.

Appendix
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,[17] 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, 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.[18]

(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,

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

[18] 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."

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].

(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).[19]

(19) "Unrelated Business Taxable Income" shall have the same meaning as defined in IRC Section 512.[20]

(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)

[19] 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.

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

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].

(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.[21]

[21]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.

(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] taxowed.

(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];[22]

(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 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.[23]

(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

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

[23] 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.

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

(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].

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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), and the Institute for Professionals in Taxation (IPT). As of this date, this draft has not been officially endorsed by these organizations.

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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.* ■