

2021 Regular Session

SENATE BILL NO. 160

BY SENATOR ALLAIN AND REPRESENTATIVE BISHOP

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

REVENUE DEPARTMENT. Conforms state partnership reporting adjustments to federal taxable income to current federal partnership audit adjustments. (gov sig)

AN ACT

To amend and reenact R.S. 47:103(A)(2)(a) and 201 and to enact R.S. 47:201.2, 287.614(C)(3), and 287.657, relative to partnership information returns and partnership audit reporting requirements; to provide for the reporting of federal partnership audit adjustments to the Department of Revenue; to provide definitions; to provide for the reporting of state tax liabilities as a result of partnership audit adjustments; to provide for methodology and procedures for calculating partnership audit adjustments; to provide for estimated payments during the course of a federal audit; to provide for the prescriptive period; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:103(A)(2)(a) and 201 are hereby amended and reenacted and R.S. 47:201.2, 287.614(C)(3), and 287.657 are hereby enacted to read as follows:

§103. Time and place for filing returns; information concerning federal return

A. * * *

(2)(a) Partnership tax returns. Except as provided for in Subparagraph (b) of this Paragraph, returns made by a partnership required to file a partnership return of

1 income made on the basis of the calendar year shall be made and filed with the
 2 secretary at Baton Rouge, Louisiana, on or before the fifteenth day of ~~April~~ **May**,
 3 following the close of the calendar year. Returns made by a partnership required to
 4 file a partnership return of income made on the basis of a fiscal year shall be made
 5 and filed with the secretary at Baton Rouge, Louisiana, on or before the fifteenth day
 6 of the ~~fourth~~ **fifth** month following the close of the fiscal year.

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8 §201. ~~Partners, not partnership, subject to tax; partnership~~ **Partnership**
 9 **informational** return of income required; **limitations on partner tax**
 10 **liability**

11 **A. Except as otherwise provided in R.S. 47:201.2, A partnership, as such,**
 12 **a partnership** shall not be subject to the income tax imposed by this Chapter, but
 13 ~~those partnerships having any member who is not an individual or who is not a~~
 14 ~~resident of Louisiana shall be required to file a partnership return of income~~ **a**
 15 **partnership shall be required to file an annual informational partnership return**
 16 **of income in accordance with R.S. 47:103(A)(2).**

17 **B.** Persons carrying on business as partners shall be liable for income tax only
 18 in their separate or individual capacities.

19 * * *

20 **§201.2. Reporting adjustments to federal taxable income and federal**
 21 **partnership audit adjustments**

22 **A. For purposes of this Section, the following words and phrases shall**
 23 **have the following meanings:**

24 **(1) "Administrative adjustment request" means an administrative**
 25 **adjustment request filed by a partnership pursuant to Section 6227 of the**
 26 **Internal Revenue Code.**

27 **(2) "Audited partnership" means a partnership subject to a partnership**
 28 **level audit resulting in a federal adjustment.**

29 **(3) "Corporate partner" means a partner that is subject to corporation**

1 income tax pursuant to Part II-A of this Chapter.

2 (4) "Department" means the Department of Revenue.

3 (5) "Direct partner" means a partner that holds an interest directly in
4 a partnership or pass-through entity.

5 (6) "Exempt partner" means a partner that is otherwise exempt from
6 taxation under this Chapter that is subject to tax on unrelated business taxable
7 income.

8 (7) "Federal adjustment" means a change to an item or amount
9 determined under the Internal Revenue Code that is used by a taxpayer to
10 compute Louisiana income tax due whether that change results from action by
11 the IRS, including a partnership level audit, or the filing of an amended federal
12 return, federal refund claim, or an administrative adjustment request by the
13 taxpayer. A federal adjustment is positive to the extent that it increases state
14 taxable income as determined under this Chapter and is negative to the extent
15 that it decreases state taxable income as determined under this Chapter.

16 (8) "Federal adjustments report" includes methods or forms required
17 and prescribed by the secretary for use by a taxpayer to report final federal
18 adjustments, including an amended Louisiana income tax return, information
19 return, or a uniform multistate report.

20 (9) "Federal partnership representative" means the person the
21 partnership designates for the taxable year as the partnership's representative
22 or the person the IRS has appointed to act as the federal partnership
23 representative pursuant to Section 6223(a) of the Internal Revenue Code.

24 (10) "Final determination date" means the following:

25 (a) Except as provided in Subparagraph (b) of this Paragraph, if the
26 federal adjustment arises from an IRS audit or other action by the IRS, the final
27 determination date is the first day on which no federal adjustments arising from
28 that audit or other action remain to be finally determined, whether by IRS
29 decision with respect to which all rights of appeal have been waived or

1 exhausted, by agreement, or, if appealed or contested, by a final decision with
2 respect to which all rights of appeal have been waived or exhausted. For
3 agreements required to be signed by the IRS and the taxpayer, the final
4 determination date is the date on which the last party signed the agreement.

5 (b) For federal adjustments arising from an IRS audit or other action by
6 the IRS, if the taxpayer filed as a member of a federal consolidated return or
7 combined Louisiana return as required by the secretary pursuant to R.S.
8 47:287.480(3), the final determination date means the first day on which no
9 related federal adjustments arising from that audit remain to be finally
10 determined, as described in Subparagraph (a) of this Paragraph, for the entire
11 group.

12 (c) If the federal adjustment results from filing an amended federal
13 return, a federal refund claim, or an administrative adjustment request, or if
14 it is a federal adjustment reported on an amended federal return or other
15 similar report filed pursuant to Section 6225(c) of the Internal Revenue Code,
16 the final determination date means the day on which the amended return,
17 refund claim, administrative adjustment request, or other similar report was
18 filed.

19 (11) "Final federal adjustment" means a federal adjustment after the
20 final determination date for that federal adjustment has passed.

21 (12) "Indirect partner" means a partner in a partnership or
22 pass-through entity that itself holds an interest directly, or through another
23 indirect partner, in a partnership or pass-through entity.

24 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986,
25 as amended, and applicable regulations as promulgated by the United States
26 Department of the Treasury.

27 (14) "IRS" means the Internal Revenue Service of the United States
28 Department of the Treasury.

29 (15) "Nonresident partner" means an individual, trust, or estate partner

1 that is not a resident partner.

2 (16) "Partner" means a person that holds an interest directly or
3 indirectly in a partnership or other pass-through entity.

4 (17) "Partnership" means an entity subject to taxation under Subchapter
5 K of the Internal Revenue Code.

6 (18) "Partnership level audit" means an examination by the IRS at the
7 partnership level pursuant to Subchapter C of Chapter 63 of Subtitle F of the
8 Internal Revenue Code, as enacted by the Bipartisan Budget Act of 2015, Public
9 Law 114-74, that results in federal adjustments.

10 (19) "Pass-through entity" means an entity, other than a partnership,
11 that is not subject to tax under this Chapter.

12 (20) "Reallocation adjustment" means a federal adjustment resulting
13 from a partnership level audit or an administrative adjustment request that
14 changes the shares of one or more items of partnership income, gain, loss,
15 expense, or credit allocated to direct partners. A positive reallocation
16 adjustment means the portion of a reallocation adjustment that would increase
17 federal income for one or more direct partners, and a negative reallocation
18 adjustment means the portion of a reallocation adjustment that would decrease
19 federal income for one or more direct partners pursuant to Section 6225 of the
20 Internal Revenue Code.

21 (21) "Resident partner" means an individual, trust, or estate partner
22 that is a resident of Louisiana for the relevant tax period. For individuals, the
23 term "resident" has the same meaning as in R.S. 47:31. For trusts and estates,
24 the term "resident" has the same meaning as in R.S. 47:300.10.

25 (22) "Reviewed year" means the taxable year of a partnership that is
26 subject to a partnership level audit from which federal adjustments arise.

27 (23) "Secretary" means the secretary of the Department of Revenue.

28 (24) "Taxpayer" has the same meaning as in R.S. 47:2 and, unless the
29 context clearly indicates otherwise, includes a partnership subject to a

1 partnership level audit or a partnership that has made an administrative
2 adjustment request, as well as a tiered partner of that partnership.

3 (25) "Tiered partner" means any partner that is a partnership or
4 pass-through entity.

5 (26) "Unrelated business taxable income" has the same meaning as in
6 Section 512 of the Internal Revenue Code.

7 B. Reporting adjustments to federal taxable income, general rule.

8 Except in the case of final federal adjustments that are required to be
9 reported by a partnership and its partners using the procedures in Subsection
10 C of this Section, a taxpayer shall report and pay any Louisiana income tax due
11 with respect to final federal adjustments arising from an audit or other action
12 by the IRS or reported by the taxpayer on a timely filed amended federal
13 income tax return, including a return or other similar report filed pursuant to
14 Section 6225(c)(2) of the Internal Revenue Code, or to a federal claim for refund
15 by filing a federal adjustments report with the secretary for the reviewed year
16 and, if applicable, paying the additional Louisiana income tax owed by the
17 taxpayer no later than one hundred eighty days after the final determination
18 date.

19 C. Reporting federal adjustments, partnership level audit and
20 administrative adjustment request. Except for negative federal adjustments
21 required under federal law or regulations to be taken into account by the
22 partnership in the partnership return for the adjustment or other year, and the
23 distributive share of adjustments that have been reported as required pursuant
24 to Subsection B of this Section, partnerships and partners shall report final
25 federal adjustments arising from a partnership level audit or an administrative
26 adjustment request and make payments as required pursuant to this
27 Subsection.

28 (1) State partnership representative.

29 (a) With respect to an action required or permitted to be taken by a

1 partnership under this Subsection or a proceeding under Chapters 17 or 18 of
2 this Subtitle with respect to that action, the state partnership representative for
3 the reviewed year shall have the sole authority to act on behalf of the
4 partnership, and the partnership's direct partners and indirect partners shall
5 be bound by those actions.

6 (b) The state partnership representative for the reviewed year is the
7 partnership's federal partnership representative unless the partnership
8 designates in writing another person as its state partnership representative.

9 (c) The secretary may establish reasonable qualifications for and
10 procedures for designating a person, other than the federal partnership
11 representative, to be the state partnership representative.

12 (2) Reporting and payment requirements for partnerships subject to a
13 final federal adjustment and their direct partners. Final federal adjustments
14 subject to the requirements of this Subsection, except for those subject to a
15 properly made election under Paragraph (3) of this Subsection, shall be
16 reported as follows:

17 (a) No later than ninety days after the final determination date, the
18 partnership shall both:

19 (i) File a completed federal adjustments report, including information
20 as required by the secretary, with the department.

21 (ii) Notify each of its direct partners of their distributive share of the
22 final federal adjustments including information as required by the secretary.

23 (b) No later than one hundred eighty days after the final determination
24 date, each direct partner that is taxed under this Chapter shall both:

25 (i) File a federal adjustments report reporting their distributive share of
26 the adjustments reported to them under Item (a)(ii) of this Paragraph as
27 required under this Chapter.

28 (ii) Pay any additional amount of tax due as if final federal adjustments
29 had been properly reported, plus any penalty and interest due under Part IV

1 of Chapter 18 of this Subtitle, and less any credit for related amounts paid or
2 withheld and remitted on behalf of the direct partner by the partnership.

3 (3) Partnership election to pay on behalf of partners. Subject to the
4 limitations in Subparagraph (c) of this Paragraph, an audited partnership
5 making an election under this Paragraph shall:

6 (a) No later than ninety days after the final determination date, file a
7 completed federal adjustments report, including information as required by the
8 secretary, and notify the department that it is making the election under this
9 Paragraph.

10 (b) No later than one hundred eighty days after the final determination
11 date, pay an amount, determined as follows, in lieu of taxes owed by its direct
12 and indirect partners:

13 (i) Exclude from final federal adjustments the distributive share of these
14 adjustments reported to a direct exempt partner not subject to tax under R.S.
15 47:287.501 with the exception of unrelated business taxable income.

16 (ii) For the total distributive shares of the remaining final federal
17 adjustments reported to direct corporate partners subject to tax under
18 Part II-A of this Chapter and to direct exempt partners subject to tax under this
19 Chapter on unrelated business taxable income, apportion and allocate the
20 adjustments as provided under Part II-A of this Chapter, and multiply the
21 resulting amount by the highest tax rate under R.S. 47:287.12.

22 (iii) For the total distributive shares of the remaining final federal
23 adjustments reported to nonresident direct partners subject to tax under Parts
24 III and VI of this Chapter, determine the amount of the adjustments which is
25 Louisiana source income under Subpart F of Part II of this Chapter, and
26 multiply the resulting amount by the highest tax rate under R.S. 47:32 for
27 individuals and R.S. 47:300.1 for trusts and estates.

28 (iv) For the total distributive shares of the remaining final federal
29 adjustments reported to tiered partners:

1 (aa) Determine the amount of the adjustments which is of a type that it
2 would be subject to sourcing to the state under Subpart F of Part II of this
3 Chapter and then determine the portion of this amount that would be sourced
4 to the state applying the provisions of this Section.

5 (bb) Determine the amount of the adjustments which is of a type that it
6 would not be subject to sourcing to Louisiana by a nonresident partner under
7 R.S. 47:290(B).

8 (cc) Determine the portion of the amount determined in Subclause (b)
9 that can be established, under regulation issued by the secretary, to be properly
10 allocable to nonresident indirect partners or other partners not subject to tax
11 on the adjustments; or that can be excluded under procedures for modified
12 reporting and payment method allowed under Paragraph (5).

13 (v) Multiply the total of the amounts determined in Subparagraphs (a)
14 and (b) reduced by the amount determined in Subparagraph (c) by the highest
15 tax rate under R.S. 47:32 for individuals and R.S. 47:300.1 for trusts and
16 estates.

17 (vi) For the total distributive shares of the remaining final federal
18 adjustments reported to resident direct partners subject to tax under Part III
19 and Part VI of this Chapter, multiply that amount by the highest tax rate under
20 R.S. 47:32 for individuals and R.S. 47:300.1 for trusts and estates.

21 (vii) Add the amounts determined in Items (ii), (iii), (v), and (vi) of this
22 Subparagraph, along with penalty and interest as provided in Part IV of
23 Chapter 18 of this Subtitle.

24 (c) Final federal adjustments subject to the election in this Paragraph
25 exclude both:

26 (i) The distributive share of final audit adjustments that under Subpart
27 D of Part 1 of this Chapter are required to be included in the unitary business
28 income of any direct or indirect corporate partner, provided that the audited
29 partnership can reasonably determine this.

1 (ii) Any final federal adjustments resulting from an administrative
2 adjustment request.

3 (d) An audited partnership not otherwise subject to any reporting or
4 payment obligation to Louisiana that makes an election under this Paragraph
5 consents to be subject to Louisiana laws related to reporting, assessment,
6 payment, and collection of Louisiana income tax calculated under this election.

7 (4) Tiered partners. The direct and indirect partners of an audited
8 partnership that are tiered partners, and all of the partners of those tiered
9 partners that are subject to tax under this Chapter, where applicable, are
10 subject to the reporting and payment requirements of Paragraph (2) of this
11 Subsection and the tiered partners are entitled to make the election provided in
12 Paragraphs (3) and (5) of this Subsection. The tiered partners or their partners
13 shall make required reports and payments no later than ninety days after the
14 time for filing and furnishing statements to tiered partners and their partners
15 as established under Section 6226 of the Internal Revenue Code and the
16 regulations thereunder. The secretary may promulgate rules and regulations to
17 establish procedures and interim time periods for the reports and payments
18 required by tiered partners and their partners and for making the elections
19 under this Subsection.

20 (5) Modified reporting and payment method. Under procedures adopted
21 by and subject to the approval of the secretary, an audited partnership or tiered
22 partner may enter into an agreement with the department to utilize an
23 alternative reporting and payment method, including applicable time
24 requirements or any other provision of this Subsection, if the audited
25 partnership or tiered partner demonstrates that the requested method will
26 reasonably provide for the reporting and payment of taxes, penalties, and
27 interest due under the provisions of this Subsection, or if the audited
28 partnership or tiered partner can show that their direct partners have agreed
29 to allow a refund of the state income tax to be issued to the entity. Application

1 for approval of an alternative reporting and payment method shall be made by
2 the audited partnership or tiered partner within the time for election as
3 provided in Paragraphs (3) or (4) of this Subsection.

4 (6) Effect of election by an audited partnership or tiered partner and
5 payment of amount due.

6 (a) An election made pursuant to Paragraphs (3) or (5) of this Subsection
7 is irrevocable, unless the secretary in her discretion determines otherwise.

8 (b) If properly reported and paid by the audited partnership or tiered
9 partner, the amount determined in Subparagraph (3)(b) of this Subsection, or
10 similarly under an optional election under Paragraph (5) of this Subsection, will
11 be treated as paid in lieu of income taxes owed by its direct and indirect
12 partners, to the extent applicable, on the same final federal adjustments. The
13 direct partners or indirect partners may not take any deduction or credit for
14 this amount or claim a refund of the amount in this state. Nothing in this
15 Subparagraph shall preclude a direct resident partner from claiming a credit
16 against taxes paid to this state pursuant to the provisions of this Chapter for any
17 amounts paid by the audited partnership or tiered partner on the resident
18 partner's behalf to another state in accordance with the provisions of R.S. 47:33.

19 (7) Failure of audited partnership or tiered partner to report or pay.
20 Nothing in this Subsection prevents the department from assessing direct
21 partners or indirect partners for taxes they owe, using the best information
22 available, if a partnership or tiered partner fails to timely make any report or
23 payment required by this Subsection for any reason.

24 D. De minimis exception. The secretary may promulgate rules and
25 regulations to establish a de minimis amount upon which a taxpayer shall not
26 be required to comply with Subsections B and C of this Section.

27 E. Prescriptive period for assessments of additional tax, interest, and
28 penalties arising from adjustments to federal taxable income. The department
29 shall assess additional tax, interest, and penalties arising from final federal

1 adjustments arising from an audit by the IRS, including a partnership level
2 audit, or reported by the taxpayer on an amended federal income tax return, or
3 as part of an administrative adjustment request by the following dates:

4 (1) Timely reported federal adjustments. If a taxpayer files with the
5 department a federal adjustments report or an amended Louisiana income tax
6 return as required within the period specified in Subsections B and C of this
7 Section, the department may assess any amounts, including in-lieu-of amounts,
8 taxes, interest, and penalties arising from those federal adjustments if the
9 department issues a notice of the assessment in accordance with R.S.
10 47:1561(A)(1) to the taxpayer on or before either of the following dates:

11 (a) The expiration of the prescriptive period specified in La. Const. Art.
12 VII, Sec. 16.

13 (b) The expiration of the one-year period following the date of filing with
14 the department of the federal adjustments report.

15 (2) Untimely reported federal adjustments. If the taxpayer fails to file the
16 federal adjustments report within the period specified in Subsections B or C, as
17 appropriate, or the federal adjustments report filed by the taxpayer omits final
18 federal adjustments or understates the correct amount of tax owed, the
19 department may assess amounts or additional amounts including in-lieu-of
20 amounts, taxes, interest, and penalties arising from the final federal
21 adjustments, if it mails a notice of the assessment in accordance with R.S.
22 47:1561(A)(1) to the taxpayer by a date that is the latest of:

23 (a) The expiration of the prescriptive period specified in La. Const. Art.
24 VII, Sec. 16.

25 (b) The expiration of the one-year period following the date the federal
26 adjustments report was filed with the department.

27 (c) Absent fraud, the expiration of the six-year period following the final
28 determination date.

29 F. Estimated tax payments during the course of a federal audit. A

1 taxpayer may make estimated payments to the department, following the
2 process prescribed by the department, of the state tax expected to result from
3 a pending IRS audit prior to the due date of the federal adjustments report. The
4 estimated tax payments shall be credited against any tax liability ultimately
5 found to be due to the state attributable to the federal adjustments report and
6 shall limit the accrual of interest pursuant to R.S. 47:1601 on that amount. If
7 the estimated tax payments exceed the final state tax liability attributable to the
8 federal adjustments report the taxpayer is entitled to a refund, subject to the
9 credit and offset provisions of R.S. 47:1622, provided the taxpayer files a federal
10 adjustments report or claim for refund of an overpayment of tax pursuant to
11 R.S. 47:1621 no later than one year following the final determination date.
12 Interest pursuant to R.S. 47:1624 shall be computed and allowed only on
13 estimated tax payments beginning ninety days after the taxpayer files a federal
14 adjustments report or claim for refund of an overpayment of tax pursuant to
15 R.S. 47:1621.

16 G. Claims for refund of an overpayment of tax arising from final federal
17 adjustments made by the IRS or by an administrative adjustment request.

18 (1) Except for negative final federal adjustments required by federal law
19 or regulations to be taken into account by the partnership in the partnership
20 return for the adjustment or other year, a taxpayer may file a claim for a
21 refund of tax arising from final federal adjustments on or before the later of:

22 (a) The expiration of the last day for filing a claim for refund of tax
23 pursuant to R.S. 47:1623, including any extensions under Subsection H of this
24 Section.

25 (b) One year from the date a federal adjustments report prescribed in
26 Subsections B or C of this Section, as applicable, was due to the department,
27 including any extensions pursuant to Subsection H of this Section. The federal
28 adjustments report shall serve as the means for the taxpayer, including a
29 partnership and its tiered partners, direct partners, and indirect partners, to

1 report additional tax due, report a claim for refund of tax, and make other
2 adjustments, including to its net operating losses, resulting from adjustments
3 to the taxpayer's federal taxable income.

4 (2) Any overpayment refunded to the partnership under Subsection C
5 of this Section is in lieu of any state income tax refund that would otherwise be
6 owed to the partners.

7 H. Scope of adjustments and extensions of time.

8 (1) Unless otherwise agreed in writing by the taxpayer and the secretary,
9 any adjustments by the department or by the taxpayer made after the
10 expiration of the prescriptive period provided in La. Const. Art. VII, Sec. 16 are
11 limited to changes to the taxpayer's tax liability arising from federal
12 adjustments.

13 (2) The time periods provided for in Subsections B and C of this Section
14 may be extended either:

15 (a) Automatically, upon written notice to the department, by sixty days
16 for an audited partnership or tiered partner that has ten thousand or more
17 direct partners.

18 (b) By written agreement between the taxpayer and the secretary.

19 (3) Any extension granted under this Subsection for filing the federal
20 adjustments report extends the last day prescribed by law for assessing any
21 additional tax arising from the adjustments to federal taxable income and the
22 period for filing a claim for refund of taxes pursuant to R.S. 47:1623.

23 I. Nothing in this Section shall be interpreted or construed to alter or
24 limit the secretary's duty and authority to determine the correct amount of tax
25 pursuant to R.S. 47:1541 and the correct amount reportable pursuant to the
26 Internal Revenue Code for federal taxable income or federal adjusted gross
27 income purposes.

28 J. The department may provide by rule for similar procedures for audits
29 and investigations conducted pursuant to the secretary's authority under

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Chapter 18 of this Subtitle.

* * *

§287.614. Time and place for filing returns; information concerning federal return;
extension of time to file

* * *

C. * * *

(3) Unless otherwise agreed in writing by the taxpayer and the secretary, adjustments by the department or by the taxpayer after the expiration of the applicable prescriptive period are limited to adjustments to the taxpayer's tax liability arising from adjustments to the taxpayer's federal taxable income.

* * *

§287.657. Estimated tax payments during the course of a federal audit

A corporation may make estimated payments to the department, following the process prescribed by the department, of the state tax expected to result from a pending Internal Revenue Service audit prior to the due date of the federal adjustments report. The estimated tax payments shall be credited against any corporation income tax liability ultimately found to be due to the state attributable to the federal adjustments report and shall limit the accrual of interest pursuant to R.S. 47:1601 on that amount. If the estimated tax payments exceed the final state tax liability attributable to the federal adjustments report the taxpayer is entitled to a refund, subject to the credit and offset provisions of R.S. 47:1622, provided the taxpayer files a federal adjustments report or claim for refund of an overpayment of tax pursuant to R.S. 47:1621 no later than one year following the final determination date. Interest pursuant to R.S. 47:1624 shall be computed and allowed only on estimated tax payments beginning ninety days after the taxpayer files a federal adjustments report or claim for refund of an overpayment of tax pursuant to R.S. 47:1621.

Section 2. This Act shall become effective upon signature by the governor or, if not

1 signed by the governor, upon expiration of the time for bills to become law without signature
 2 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 3 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 4 effective on the day following such approval.

The original instrument was prepared by Leonore Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by Curry J. Lann.

DIGEST

SB 160 Engrossed

2021 Regular Session

Allain

Present law requires that the due date for partnership information returns for the previous calendar year is April 15th.

Proposed law changes the due date for partnership information returns to May 15th.

Present law provides that partnerships are not subject to state income tax.

Proposed law provides for an exception to present law for partnerships that make elections to pay income tax audit adjustments on behalf of their partners under proposed law.

Present law requires partnerships with nonresident members to file annual informational returns with the Dept. of Revenue.

Proposed law requires all partnerships doing business in Louisiana to file annual informational returns.

Proposed law defines "partnership" as an entity subject to taxation pursuant to Subchapter K of the Internal Revenue Code.

Proposed law provides for the reporting of partnership audit adjustments of federal taxable income to the Dept. of Revenue.

Proposed law provides for definitions.

Proposed law provides the general rule for taxpayers not using optional procedures in proposed law that a taxpayer shall report and pay any Louisiana income tax due with respect to final federal adjustments arising from an audit or other action by the IRS or reported by the taxpayer on a timely filed amended federal income tax return no later than 180 days after the final determination date.

Proposed law provides that except for negative federal adjustments and in the case where the taxpayer follows the general rule that partnerships and partners shall report final federal adjustments arising from a partnership level audit or an administrative adjustment request and make payments as required by proposed law.

Proposed law provides for the designation of a state partnership representative for the reviewed year who has the sole authority to act on behalf of the partnership and to bind all partners.

Proposed law requires that final federal adjustments be reported no later than 90 days after the final determination date and that the partnership must notify the department of the adjustments and notify the direct partners of their distributive share of the final federal

adjustments.

Proposed law requires that within 180 days of the final determination date each direct partner must file a federal adjustments report with the state and pay any additional amount due.

Proposed law authorizes a partnership election under which the partnership pays any state taxes owed on federal partnership audit adjustments on behalf of its partners.

Proposed law provides that partnerships making the partnership pays election must file a federal adjustments report with the department notifying the department of its partnership pays election within 90 days of the final determination date.

Proposed law further provides that partnerships making the partnership pays election shall pay an amount in lieu of taxes owed by its partners at the highest corporate rate for corporate partners and at the highest individual income tax rate for partners that are individuals, estates, or trusts.

Proposed law provides for exclusions from state tax for certain federal adjustments.

Proposed law provides that a partnership not otherwise subject to state filing and payment obligations that makes the partnership pays election is consenting to be subject to the tax laws of this state.

Proposed law makes provisions for reporting adjustments and making payments for tiered partners.

Proposed law authorizes the secretary to provide for de minimus exceptions by rule.

Proposed law provides for prescriptive periods for the assessment of additional state tax, interest, and penalties arising from adjustments to federal taxable income.

Proposed law authorizes state estimated tax payments to be made during a federal corporation or partnership audit prior to the due date of the federal adjustments report and that any estimated payments will be credited against any state tax later determined to be due or refunded if it is determined that the estimated payment exceeded the tax liability.

Proposed law provides for procedures for claims for refund of an overpayment of tax arising from final federal adjustments made by the IRS.

Proposed law provides that any state income tax refund made to a partnership that makes the partnership pays election is in lieu of any refund that would otherwise be owed to the partners for the state adjustment.

Proposed law provides that unless the secretary and the taxpayer have a written agreement to the contrary, that all state adjustments made after a tax period prescribes are limited to tax liability changes arising from the federal adjustments for both corporations and partnerships.

Proposed law authorizes the secretary to grant extensions of time for partners and partnerships to file the federal adjustments report.

Proposed law provides that proposed law does not alter the secretary's authority to determine the correct amount of tax reportable by the taxpayer to the IRS.

Proposed law authorizes the department to provide by rule for similar procedures for state partnership audits.

Proposed law limits state adjustments to items within the scope of the federal audit.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:103(A)(2)(a) and 201; adds R.S. 47:201.2, 287.614(C)(3), and 287.657)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Provides for the timing of the accrual of refund interest.
2. Authorizes the department to provide by rule for similar procedures for state partnership audits.
3. Limits state adjustments to items within the scope of the federal audit.
4. Provides for estimated payments during the course of the federal audit for corporations.
5. Makes technical changes.