

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.

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

\* \* \*

§201. ~~Partners, not partnership, subject to tax; partnership~~ Partnership



1 compute Louisiana income tax due whether that change results from action by  
2 the IRS, including a partnership level audit, or the filing of an amended federal  
3 return, federal refund claim, or an administrative adjustment request by the  
4 taxpayer. A federal adjustment is positive to the extent that it increases state  
5 taxable income as determined under this Chapter and is negative to the extent  
6 that it decreases state taxable income as determined under this Chapter.

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

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

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

16 (a) Except as provided in Subparagraph (b) of this Paragraph, if the  
17 federal adjustment arises from an IRS audit or other action by the IRS, the final  
18 determination date is the first day on which no federal adjustments arising from  
19 that audit or other action remain to be finally determined, whether by IRS  
20 decision with respect to which all rights of appeal have been waived or  
21 exhausted, by agreement, or, if appealed or contested, by a final decision with  
22 respect to which all rights of appeal have been waived or exhausted. For  
23 agreements required to be signed by the IRS and the taxpayer, the final  
24 determination date is the date on which the last party signed the agreement.

25 (b) For federal adjustments arising from an IRS audit or other action by  
26 the IRS, if the taxpayer filed as a member of a federal consolidated return or  
27 combined Louisiana return as required by the secretary pursuant to R.S.  
28 47:287.480(3), the final determination date means the first day on which no  
29 related federal adjustments arising from that audit remain to be finally  
30 determined, as described in Subparagraph (a) of this Paragraph, for the entire

1 group.

2 (c) If the federal adjustment results from filing an amended federal  
3 return, a federal refund claim, or an administrative adjustment request, or if  
4 it is a federal adjustment reported on an amended federal return or other  
5 similar report filed pursuant to Section 6225(c) of the Internal Revenue Code,  
6 the final determination date means the day on which the amended return,  
7 refund claim, administrative adjustment request, or other similar report was  
8 filed.

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

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

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

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

19 (15) "Nonresident partner" means an individual, trust, or estate partner  
20 that is not a resident partner.

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

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

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

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

1           (20) "Reallocation adjustment" means a federal adjustment resulting  
2           from a partnership level audit or an administrative adjustment request that  
3           changes the shares of one or more items of partnership income, gain, loss,  
4           expense, or credit allocated to direct partners. A positive reallocation  
5           adjustment means the portion of a reallocation adjustment that would increase  
6           federal income for one or more direct partners, and a negative reallocation  
7           adjustment means the portion of a reallocation adjustment that would decrease  
8           federal income for one or more direct partners pursuant to Section 6225 of the  
9           Internal Revenue Code.

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

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

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

17           (24) "Taxpayer" has the same meaning as in R.S. 47:2 and, unless the  
18           context clearly indicates otherwise, includes a partnership subject to a  
19           partnership level audit or a partnership that has made an administrative  
20           adjustment request, as well as a tiered partner of that partnership.

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

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

25           **B. Reporting adjustments to federal taxable income, general rule.**

26           Except in the case of final federal adjustments that are required to be  
27           reported by a partnership and its partners using the procedures in Subsection  
28           C of this Section, a taxpayer shall report and pay any Louisiana income tax due  
29           with respect to final federal adjustments arising from an audit or other action  
30           by the IRS or reported by the taxpayer on a timely filed amended federal

1 income tax return, including a return or other similar report filed pursuant to  
2 Section 6225(c)(2) of the Internal Revenue Code, or to a federal claim for refund  
3 by filing a federal adjustments report with the secretary for the reviewed year  
4 and, if applicable, paying the additional Louisiana income tax owed by the  
5 taxpayer no later than one hundred eighty days after the final determination  
6 date.

7 C. Reporting federal adjustments, partnership level audit and  
8 administrative adjustment request. Except for negative federal adjustments  
9 required under federal law or regulations to be taken into account by the  
10 partnership in the partnership return for the adjustment or other year, and the  
11 distributive share of adjustments that have been reported as required pursuant  
12 to Subsection B of this Section, partnerships and partners shall report final  
13 federal adjustments arising from a partnership level audit or an administrative  
14 adjustment request and make payments as required pursuant to this  
15 Subsection.

16 (1) State partnership representative.

17 (a) With respect to an action required or permitted to be taken by a  
18 partnership under this Subsection or a proceeding under Chapters 17 or 18 of  
19 this Subtitle with respect to that action, the state partnership representative for  
20 the reviewed year shall have the sole authority to act on behalf of the  
21 partnership, and the partnership's direct partners and indirect partners shall  
22 be bound by those actions.

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

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

29 (2) Reporting and payment requirements for partnerships subject to a  
30 final federal adjustment and their direct partners. Final federal adjustments

1 subject to the requirements of this Subsection, except for those subject to a  
2 properly made election under Paragraph (3) of this Subsection, shall be  
3 reported as follows:

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

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

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

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

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

15 (ii) Pay any additional amount of tax due as if final federal adjustments  
16 had been properly reported, plus any penalty and interest due under Part IV  
17 of Chapter 18 of this Subtitle, and less any credit for related amounts paid or  
18 withheld and remitted on behalf of the direct partner by the partnership.

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

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

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

29 (i) Exclude from final federal adjustments the distributive share of these  
30 adjustments reported to a direct exempt partner not subject to tax under R.S.

1 47:287.501 with the exception of unrelated business taxable income.

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

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

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

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

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

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

28 (v) Multiply the total of the amounts determined in Subparagraphs (a)  
29 and (b) of this Paragraph reduced by the amount determined in Subparagraph  
30 (c) of this Paragraph by the highest tax rate under R.S. 47:32 for individuals

1 and R.S. 47:300.1 for trusts and estates.

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

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

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

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

15 (ii) Any final federal adjustments resulting from an administrative  
16 adjustment request.

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

21 (4) Tiered partners. The direct and indirect partners of an audited  
22 partnership that are tiered partners, and all of the partners of those tiered  
23 partners that are subject to tax under this Chapter, where applicable, are  
24 subject to the reporting and payment requirements of Paragraph (2) of this  
25 Subsection and the tiered partners are entitled to make the election provided in  
26 Paragraphs (3) and (5) of this Subsection. The tiered partners or their partners  
27 shall make required reports and payments no later than ninety days after the  
28 time for filing and furnishing statements to tiered partners and their partners  
29 as established under Section 6226 of the Internal Revenue Code and the  
30 regulations thereunder. The secretary may promulgate rules and regulations to

1 establish procedures and interim time periods for the reports and payments  
2 required by tiered partners and their partners and for making the elections  
3 under this Subsection.

4 (5) Modified reporting and payment method. Under procedures adopted  
5 by and subject to the approval of the secretary, an audited partnership or tiered  
6 partner may enter into an agreement with the department to utilize an  
7 alternative reporting and payment method, including applicable time  
8 requirements or any other provision of this Subsection, if the audited  
9 partnership or tiered partner demonstrates that the requested method will  
10 reasonably provide for the reporting and payment of taxes, penalties, and  
11 interest due under the provisions of this Subsection, or if the audited  
12 partnership or tiered partner can show that their direct partners have agreed  
13 to allow a refund of the state income tax to be issued to the entity. Application  
14 for approval of an alternative reporting and payment method shall be made by  
15 the audited partnership or tiered partner within the time for election as  
16 provided in Paragraphs (3) or (4) of this Subsection.

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

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

21 (b) If properly reported and paid by the audited partnership or tiered  
22 partner, the amount determined in Subparagraph (3)(b) of this Subsection, or  
23 similarly under an optional election under Paragraph (5) of this Subsection, will  
24 be treated as paid in lieu of income taxes owed by its direct and indirect  
25 partners, to the extent applicable, on the same final federal adjustments. The  
26 direct partners or indirect partners may not take any deduction or credit for  
27 this amount or claim a refund of the amount in this state. Nothing in this  
28 Subparagraph shall preclude a direct resident partner from claiming a credit  
29 against taxes paid to this state pursuant to the provisions of this Chapter for any  
30 amounts paid by the audited partnership or tiered partner on the resident

1 partner's behalf to another state in accordance with the provisions of R.S. 47:33.

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

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

10 E. Prescriptive period for assessments of additional tax, interest, and  
11 penalties arising from adjustments to federal taxable income. The department  
12 shall assess additional tax, interest, and penalties arising from final federal  
13 adjustments arising from an audit by the IRS, including a partnership level  
14 audit, or reported by the taxpayer on an amended federal income tax return, or  
15 as part of an administrative adjustment request by the following dates:

16 (1) Timely reported federal adjustments. If a taxpayer files with the  
17 department a federal adjustments report or an amended Louisiana income tax  
18 return as required within the period specified in Subsections B and C of this  
19 Section, the department may assess any amounts, including in-lieu-of amounts,  
20 taxes, interest, and penalties arising from those federal adjustments if the  
21 department issues a notice of the assessment in accordance with R.S.  
22 47:1561(A)(1) to the taxpayer on or before either of the following dates:

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 of filing with  
26 the department of the federal adjustments report.

27 (2) Untimely reported federal adjustments. If the taxpayer fails to file the  
28 federal adjustments report within the period specified in Subsections B or C, as  
29 appropriate, or the federal adjustments report filed by the taxpayer omits final  
30 federal adjustments or understates the correct amount of tax owed, the

1 department may assess amounts or additional amounts including in-lieu-of  
2 amounts, taxes, interest, and penalties arising from the final federal  
3 adjustments, if it mails a notice of the assessment in accordance with R.S.  
4 47:1561(A)(1) to the taxpayer by a date that is the latest of:

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

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

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

11 F. Estimated tax payments during the course of a federal audit. A  
12 taxpayer may make estimated payments to the department, following the  
13 process prescribed by the department, of the state tax expected to result from  
14 a pending IRS audit prior to the due date of the federal adjustments report. The  
15 estimated tax payments shall be credited against any tax liability ultimately  
16 found to be due to the state attributable to the federal adjustments report and  
17 shall limit the accrual of interest pursuant to R.S. 47:1601 on that amount. If  
18 the estimated tax payments exceed the final state tax liability attributable to the  
19 federal adjustments report the taxpayer is entitled to a refund, subject to the  
20 credit and offset provisions of R.S. 47:1622, provided the taxpayer files a federal  
21 adjustments report or claim for refund of an overpayment of tax pursuant to  
22 R.S. 47:1621 no later than one year following the final determination date.  
23 Interest pursuant to R.S. 47:1624 shall be computed and allowed only on  
24 estimated tax payments beginning ninety days after the taxpayer files a federal  
25 adjustments report or claim for refund of an overpayment of tax pursuant to  
26 R.S. 47:1621.

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

29 (1) Except for negative final federal adjustments required by federal law  
30 or regulations to be taken into account by the partnership in the partnership

1 return for the adjustment or other year, a taxpayer may file a claim for a  
2 refund of tax arising from final federal adjustments on or before the later of:

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

6 (b) One year from the date a federal adjustments report prescribed in  
7 Subsections B or C of this Section, as applicable, was due to the department,  
8 including any extensions pursuant to Subsection H of this Section. The federal  
9 adjustments report shall serve as the means for the taxpayer, including a  
10 partnership and its tiered partners, direct partners, and indirect partners, to  
11 report additional tax due, report a claim for refund of tax, and make other  
12 adjustments, including to its net operating losses, resulting from adjustments  
13 to the taxpayer's federal taxable income.

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

17 H. Scope of adjustments and extensions of time.

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

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

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

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

29 (3) Any extension granted under this Subsection for filing the federal  
30 adjustments report extends the last day prescribed by law for assessing any

1 additional tax arising from the adjustments to federal taxable income and the  
2 period for filing a claim for refund of taxes pursuant to R.S. 47:1623.

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

8 J. The department may provide by rule for similar procedures for audits  
9 and investigations conducted pursuant to the secretary's authority under  
10 Chapter 18 of this Subtitle.

11 \* \* \*

12 §287.614. Time and place for filing returns; information concerning federal return;  
13 extension of time to file

14 \* \* \*

15 C. \* \* \*

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

20 \* \* \*

21 §287.657. Estimated tax payments during the course of a federal audit

22 A corporation may make estimated payments to the department,  
23 following the process prescribed by the department, of the state tax expected to  
24 result from a pending Internal Revenue Service audit prior to the due date of  
25 the federal adjustments report. The estimated tax payments shall be credited  
26 against any corporation income tax liability ultimately found to be due to the  
27 state attributable to the federal adjustments report and shall limit the accrual  
28 of interest pursuant to R.S. 47:1601 on that amount. If the estimated tax  
29 payments exceed the final state tax liability attributable to the federal  
30 adjustments report the taxpayer is entitled to a refund, subject to the credit and

1           offset provisions of R.S. 47:1622, provided the taxpayer files a federal  
2           adjustments report or claim for refund of an overpayment of tax pursuant to  
3           R.S. 47:1621 no later than one year following the final determination date.  
4           Interest pursuant to R.S. 47:1624 shall be computed and allowed only on  
5           estimated tax payments beginning ninety days after the taxpayer files a federal  
6           adjustments report or claim for refund of an overpayment of tax pursuant to  
7           R.S. 47:1621.

8           Section 2. This Act shall become effective upon signature by the governor or, if not  
9           signed by the governor, upon expiration of the time for bills to become law without signature  
10          by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
11          vetoed by the governor and subsequently approved by the legislature, this Act shall become  
12          effective on the day following such approval.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_