

Summary of Interested Parties Meeting De Minimis Partner Reporting and Payment Requirements

I. Administration

On July 14, 2020 at 10:00 a.m., interested members of the public (Participants) attended the Interested Parties Meeting (IPM) on De Minimis Partner Reporting and Payment Requirements (De Minimis Rules). The meeting was held telephonically.

Michael R. Laisné, FTB Tax Counsel III, Leah Thyberg, FTB Tax Counsel III, and Rupinder Dhaliwal, FTB Program Specialist III, served as the IPM Facilitators (Facilitators). The Facilitators explained the purpose of the IPM was to provide the public with an opportunity to provide comments on De Minimis Rules. Participants were advised they had until August 11, 2020 to submit written comments.

The Facilitators also noted that there were two documents available as handouts: (1) the notice of the meeting and (2) a document containing the discussion topic.

II. Discussion

The Facilitators explained the importance of the following two points in advance of seeking comments: First, FTB has not yet determined the proper threshold, or the process of implementation for the De Minimis Rules, nor has FTB determined the method for verifying the accuracy of those claiming an exemption under the De Minimis Rules; and second, these undetermined matters appear to be novel issues as no other state nor the IRS have adopted a de minimis rule for the new partnership audit rules.

Facilitators opened the discussion for public input on this topic.

Three comments were received as detailed below:

A commentator provided background information to help participants understand the provision stating the De Minimis Rules came from the Multistate Tax Commission's (MTC's) Model Legislation (Model) finalized in early January 2019. The commentator indicated the Model covers both the partnership Revenue Agent Report (RAR) provision and general RAR reporting provisions for state purposes. Interested Parties discussing the Model (consisting of the MTC, the Committee on State Taxation, the Tax Executives Institute, the American Institute of CPAs, the Institute for Professionals in Taxation, and the Master Limited Partnership Association) agreed that for purposes of the Model, if the tax resulting from a RAR was zero or a low amount, then there would be no state reporting requirement. However, the commentator explained that in discussing the Model, Interested Parties were never able to establish a number of what the qualifying low amount should be.

One commentator mentioned that the De Minimis Rules should be implemented because they are consistent with legislative intent and avoid unnecessary administrative burdens for FTB and taxpayers, especially in the context of publically traded

partnerships (PTPs). The commentator stated that most partners in a PTP receiving a federal partnership audit adjustment resulting in a state source income adjustment would receive a small share of the adjustment, and other partners would receive the majority depending on their overall ownership. The commentator stated that requiring amended returns from every partner after such adjustments results in many partners possibly required to file amended returns on which little or no additional tax is owed which would also result in increased cost and time of FTB staff to process and review the amended returns and may far outweigh any revenue generated. The commentator felt the same would be true of taxpayers, as they would need to use additional time and expense to amend returns with little or no tax implications.

Another commentator encouraged the FTB to permit taxpayers to utilize a shorter or simplified process to inform the state of adjustments resulting from a federal partnership level audit, especially in situations where the federal changes result in a California adjustment less than the cost of the preparation and filing of an amended California return. The commentator stated that the cost to prepare and file an amended return is between \$350 and \$500 per return. Therefore, the commentator felt taxpayers would rather notify FTB and pay a deemed de minimis amount to satisfy reporting requirements instead of filing an amended return. Also, the commentator noted the MTC had broader language that could be applied beyond changes resulting from federal partnership audits. The commentator suggested that FTB implement regulations to provide filing and payment relief for the reporting of de minimis changes beyond the context of centralized partnership audits. The commentator also provided language regarding more specific procedures from the MTC for dealing with de minimis changes.

III. Closing

The Facilitators indicated that staff would review comments received from the public during the comment period ending on August 11, 2020 and that a summary of the IPM and those comments would be released on FTB's website.