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STATE TAX DEPARTMENT

ADMINISTRATIVE NOTICE 2019-22

Subject: Partnerships, limited liability companies and other business entities subject to Subchapter K of the Internal Revenue Code of 1986 as amended.

The United States Congress enacted new federal partnership audit rules and procedures that apply to tax years beginning on and after January 1, 2018. As used here, "partnership" means any business entity subject to Subchapter K of the Internal Revenue Code.

The West Virginia personal income tax, in W. Va. Code § 11-21-1 *et seq.*, and the West Virginia corporation net income tax, in W. Va. Code § 11-24-1 *et seq.*, are conformity statutes, meaning that the computation of West Virginia income tax begins with an individual's federal adjusted gross income for the taxable year, or with federal taxable income, in the case of corporations subject to tax under Subchapter C of the Internal Revenue Code.

Under the new federal partnership audit rules, partnerships that cannot elect out of the new audit rules, or that fail to elect out of the new rules, will be audited by the Internal Revenue Service and, if the audit determines that additional federal income tax is owed, the partnership will be billed for an imputed federal tax amount, which the partnership may pay or push out to its partners.

During the 2019 regular session of the West Virginia Legislature, enrolled Senate Bill 499 was enacted, which conforms West Virginia's tax treatment of partnerships and partners with how they are treated for federal income tax purposes, for taxable years beginning on and after January 1, 2018. See Enrolled Senate Bill 499, effective July 1, 2019. This bill requires partnerships to notify the Tax Commissioner of federal audit adjustments and provides for the partnership to pay the additional West Virginia income taxes attributable to the federal audit adjustments, or to push the additional West Virginia tax out to its partners. When the federal audit adjustments result in an overpayment of West Virginia income taxes, a procedure for claiming a refund is provided.

Under the new federal audit rules, the tax matters partner no longer exists and is replaced by the partnership representative, who has considerably more authority than did the tax matters partner. Under Senate Bill 499, the West Virginia partnership representative is

the federal partnership representative, unless a separate West Virginia partnership representative is designated by the partnership.

It is likely that many West Virginia partnerships will be able to elect out of the new federal partnership audit regimes. When this election is made for federal income tax purposes, the partnership will not be subject to the new partnership audit rules in W. Va. Code § 11-21A-1 *et seq.* These partnerships and their partners will continue to be treated for tax purposes like they have historically been treated for federal and state income tax purposes.

A copy of enrolled Senate Bill 499 is available at the Legislature's website: http://www.wvlegislature.gov/Bill_Status/bill_status.cfm

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