DEPARTMENT OF REVENUE

Taxation Division

INCOME TAX

1 CCR 201-2

Rule 39-22-601.5–1. Federal Partnership Adjustments.

Basis and Purpose. The statutory bases for this rule are sections 39-21-112(1) and 39-22-601.5, C.R.S. The purpose of this rule is to provide guidance regarding reporting and payment requirements established for partnerships and partners relating to federal adjustments.

(1) **General Rule.** Except as otherwise provided in section 39-22-601.5, C.R.S., partnerships must report all final federal adjustments to the Department and comply with all other requirements imposed by section 39-22-601.5, C.R.S., and this rule.

(2) **Definitions.** As used in this rule, unless context otherwise requires:

(a) "Electing partnership" means:

(i) an audited partnership that makes the election under section 39-22-601.5(3)(d), C.R.S., to pay the amount determined under section 39-22-601.5(3)(e), C.R.S., in lieu of taxes owed by its direct and indirect partners; or

(ii) a tiered partner that:

(A) is a direct or indirect partner in an audited partnership; and

(B) makes the election under section 39-22-601.5(3)(d) and (3)(f), C.R.S., to pay the amount determined under section 39-22-601.5(3)(e), C.R.S., in lieu of taxes owed by its direct and indirect partners.

(b) "In-lieu-of amount" means the amount determined pursuant to section 39-22-601.5(3)(e), C.R.S.

(c) "Partners" includes any direct and indirect tiered partners of the electing partnership.

(d) "Tiered partner":

(i) includes any partner that is a partnership or S corporation; and

(ii) does not include any partner that is a trust or estate.

(3) **State Partnership Representative.** The state partnership representative for the reviewed year is the partnership's federal partnership representative unless the partnership designates in writing another person as its state partnership representative. Such designation may be made by the partnership in the Partnership Federal Adjustments Report it files pursuant to paragraph (4) of this rule. A partnership may designate as its state partnership representative only a person who is eligible to serve as its federal partnership representative.

(4) **Partnership Federal Adjustments Report.**

(a) Partnerships must electronically file a Partnership Federal Adjustments Report to report final federal adjustments regardless of whether:

(i) the final federal adjustments result from an IRS audit or an administrative adjustment request; and

(ii) the partnership makes an election pursuant to section 39-22-601.5(3)(d), C.R.S.

(b) A partnership must file the required Partnership Federal Adjustments Report by the applicable due date established in section 39-22-601.5(3)(c)(II) or (3)(d)(I), C.R.S., plus any extension allowed pursuant to section 39-22-601.5(8)(b), C.R.S., and provide all information required therein, except as otherwise provided in paragraph (6)(g) of this rule. The report must include the required information for each direct partner, including any direct partner excluded pursuant to section 6225(c)(2) of the Internal Revenue Code from the computation of the imputed underpayment.

(5) **Reporting Partners' Shares of Federal Adjustments.** Partnerships and partners must comply with the requirements of section 39-22-601.5(3)(c), C.R.S., and this paragraph (5) with respect to all final federal adjustments, except for those adjustments for which an election has been properly made pursuant to section 39-22-601.5(3)(d), C.R.S.

(a) *Tiered Partners.* Tiered partners are subject to the same reporting and payment requirements in section 39-22-601.5(3)(c), C.R.S., as are partnerships. A tiered partner's direct partners are subject to the requirements in section 39-22-601.5(3)(c)(III), C.R.S. Tiered partners and their direct partners shall make required reports and payments no later than 90 days after the time for filing and furnishing statements to tiered partners and their partners as established under section 6226 of the Internal Revenue Code and the regulations thereunder.

(b) *Partners for the Reviewed Year.* The provisions of section 39-22-601.5(3)(c), C.R.S., and this paragraph (5) apply with respect to the partners of the partnership for the tax year to which the item being adjusted relates.

(c) *Notification for Direct Partners.*

(i) No later than 90 days after the final determination date plus any extension allowed pursuant to section 39-22-601.5(8)(b), C.R.S., the partnership must notify each of its direct partners of:

(A) their distributive share of the final federal adjustments and, if the direct partner is a nonresident individual, nonresident estate, or nonresident trust, the portion of that distributive share derived from sources within Colorado under section 39-22-203, C.R.S.;

(B) any amount of additional Colorado income tax remitted by the partnership for the direct partner pursuant to section 39-22-601.5(3)(c)(II)(D), C.R.S.;

(C) any amount of additional Colorado income tax remitted by the partnership for the direct partner pursuant to section 39-22-601.5(3)(c)(II)(C), C.R.S., with either:

(I) an amended return filed by the partnership for a tax year commencing on or after January 1, 2022, for which the partnership made a SALT Parity Act election pursuant to section 39-22-343, C.R.S.; or

(II) an amended nonresident composite return filed by the partnership pursuant to section 39-22-601(5.5)(d), C.R.S., for a tax year commencing on or after January 1, 2024; and

(D) the inclusion of the direct partner in either:

(I) an amended return filed by the partnership for which the partnership made a SALT Parity Act election pursuant to section 39-22-343, C.R.S.; or

(II) an amended nonresident composite return filed by the partnership pursuant to section 39-22-601(5)(d) or 39-22-601(5.5)(d), C.R.S.

(ii) A partnership can satisfy the requirements of paragraph (5)(c)(i) of this rule by providing a properly completed "Partner Notification of Final Federal Adjustments for Colorado Income Tax" (DR 0796) to each direct partner.

(d) *Partners' Amended Returns.*

(i) Except as provided in paragraph (5)(d)(ii) of this rule, each direct partner is required to file an amended Colorado income tax return for the tax year to which the adjusted item relates. The partner must report their distributive share of the final federal adjustments as an "other addition" or "other subtraction," as applicable. A partner filing an amended Colorado income tax return may claim credit for:

(A) any additional payment remitted on their behalf pursuant to section 39-22-601.5(3)(c)(II)(D), C.R.S.;

(B) the credit allowed to the partner pursuant to section 39-22-347, C.R.S., for the partner's share of the additional tax paid by the partnership with an amended return filed under section 39-22-601.5(3)(c)(II)(C), C.R.S., and the SALT Parity Act.

(ii) A partner is not required to file an amended Colorado income tax return if:

(A) the partner is exempt from taxation with respect to the adjustments pursuant to section 39-22-112, C.R.S.;

(B) the partner was included in both a composite return filed by the partnership under section 39-22-601(5)(d) or 39-22-601(5.5)(d), C.R.S., and an amended composite return filed by the partnership pursuant to section 39-22-601.5(3)(c)(II)(C), C.R.S., to report the partner's distributive share of the final federal adjustment; or

(C) all of the following conditions are met:

(I) the partnership made an election under the SALT Parity Act for the tax year to which the adjusted item relates;

(II) the partnership filed an amended return under section 39-22-601.5(3)(c)(II)(C), C.R.S., and the SALT Parity Act to report the final federal adjustment and pay the additional amount due; and

(III) the additional credit allowed to the partner under section 39-22-347, C.R.S. (for the partner's share of the additional tax paid by the partnership with an amended return filed under section 39-22-601.5(3)(c)(II)(C), C.R.S., and the SALT Parity Act) equals or exceeds the tax the partner would otherwise owe on their amended Colorado income tax return.

(e) *Amended SALT Parity Act Returns.* In the case of negative final federal adjustments for a partnership that made an election under the SALT Parity Act for the tax year to which the adjusted item relates, no refund is allowed to the partnership that made the SALT Parity Act election for those negative final federal adjustments. Instead, each partner must file an amended Colorado income tax return to claim a refund for any overpayment resulting from their distributive share of the final federal adjustments.

(6) **Partnership Election to Pay Amount in Lieu of Tax on Partners.**

(a) *Scope.* Section 39-22-601.5(3)(d) and (3)(e), C.R.S., and this paragraph (6) apply to electing partnerships, defined in paragraph (2)(a) of this rule, and their partners, including tiered partners.

(b) *Reviewed Year Partners.* The in-lieu-of amount is determined with respect to the reviewed year partners, not partners for the adjustment year.

(c) *Notification for Corporate Partners Excluded from Election.* If a corporate partner's distributive share of a final federal adjustment is excluded from the election under section 39-22-601.5(3)(d)(III)(A), C.R.S., the electing partnership must send the corporate partner the notice required by section 39-22-601.5(3)(c)(II)(B), C.R.S., and paragraph (5)(c) of this rule.

(d) *Tax Rate.* The tax rate applicable to the electing partnership's reviewed year is used in calculating the amount due under section 39-22-601.5(3)(e), C.R.S.

(e) *Apportionment and Allocation.* Apportionment under section 39-22-601.5(3)(e)(II), C.R.S., is performed using the apportionment factors determined for the partnership under section 39-22-303.6, C.R.S., for the reviewed year. For the purpose of section 39-22-601.5(3)(e)(II), C.R.S., the character of final federal adjustments, as apportionable income or nonapportionable income under section 39-22-303.6, C.R.S., is determined with respect to the electing partnership and not with respect to each partner.

(f) *Indirect Nonresident and Tax-Exempt Partners.* In determining the in-lieu-of amount, the final federal adjustments reported to tiered partners are reduced under section 39-22-601.5(3)(e)(V), C.R.S., by the portions of non-sourced adjustments determined under section 39-22-601.5(3)(e)(IV)(B), C.R.S., that are established pursuant to section 39-22-601.5(3)(e)(IV)(C), C.R.S., to be properly allocable to nonresident partners that are indirect partners or other partners not subject to tax on the adjustments. Such portions are so established if and only to the extent that the tiered partner certifies to the electing partnership such proper allocation in accordance with the requirements of this paragraph (6)(f).

(i) The tiered partner's certification must be made in writing and signed under the penalties of perjury in the second degree by a partner or, in the case of a tiered

partner that is an S corporation, an officer duly authorized to act on the tiered partner's behalf.

(ii) The tiered partner's certification must include, with respect to each direct partner of the tiered partner:

(A) the partner's name, social security number or taxpayer identification number, and last-known mailing address;

(B) the partner's distributive share of the non-sourced adjustments determined under section 39-22-601.5(3)(e)(IV)(B), C.R.S., and

(C) indication of whether the partner was a resident of Colorado for the reviewed year.

(iii) The electing partnership must retain in its records the tiered partner's certification.

(g) *Federal Adjustment Report Stating In-Lieu-Of Amount.* An electing partnership may initially submit the Partnership Federal Adjustments Report required by section 39-22-601.5(3)(d)(I), C.R.S., and paragraph (4) of this rule without stating for each direct partner the part of their distributive share of the final federal adjustments that are apportioned and allocated to Colorado under section 39-22-601.5(3)(e), C.R.S., for the purpose of calculating the in-lieu-of amount, provided that, on or before the due date for paying the in-lieu-of amount under section 39-22-601.5(3)(d)(II), C.R.S., plus any extension allowed pursuant to section 39-22-601.5(8), C.R.S., the electing partnership:

(i) submits an amended Partnership Federal Adjustments Report stating for each direct partner the part of their distributive share of the final federal adjustments that are apportioned and allocated to Colorado under section 39-22-601.5(3)(e), C.R.S., for the purpose of calculating the in-lieu-of amount; and

(ii) remits payment for the in-lieu-of-amount.

(h) *Assessment of In-Lieu-of-Amount.* For the purpose of article 21 of title 39, C.R.S., the in-lieu-of-amount reported by the electing partnership is an assessment. If a partnership fails to pay the in-lieu-of amount, along with any applicable penalty and interest within the time provided, the Department may collect the amounts due pursuant to section 39-21-114, C.R.S.

(i) *Penalties and Interest.* For the purpose of section 39-22-601.5(3)(e)(VII), C.R.S., penalties and interest are calculated from the original due date of the partnership's return for the tax year to which the item being adjusted relates, not including any extensions, without regard to the due dates for any partners' returns.

(j) *Additional Amounts Due.* As soon as practicable after a partnership has made an election pursuant to section 39-22-601.5(3)(d), C.R.S., and reported the in-lieu-of amount, the Department shall examine the federal adjustment report filed by the partnership and shall determine the correct in-lieu-of amount, penalty, and interest. If the in-lieu-of amount, penalty, and interest found to be due is greater than the amount previously assessed or paid, the Department shall issue a notice of deficiency to the electing partnership.

(7) **Estimated Payments.** Audited partnerships and their direct and indirect partners may make estimated payments pursuant to section 39-22-601.5(6), C.R.S., during an Internal Revenue Service audit prior to the due date and the filing of the federal adjustments report.

(a) *Audited Partnerships.* An audited partnership may make estimated payments for application toward the in-lieu-of amount due as the result of an election made pursuant to section 39-22-601.5(3)(d), C.R.S. Estimated payments made by an audited partnership cannot be claimed by any direct or indirect partners or applied toward any tax that partners may owe pursuant to section 39-22-601.5(3)(c)(III), C.R.S., and paragraph (5) of this rule. An audited partnership that makes an election under section 39-22-601.5(3)(d), C.R.S., may not claim or apply toward any in-lieu-of amount any estimated payments made by any direct or indirect partner.

(b) *Direct and Indirect Partners.* Any direct or indirect partner of an audited partnership may make estimated payments for application toward additional tax they may owe pursuant to section 39-22-601.5(3)(c)(III), C.R.S., and paragraph (5) of this rule. Estimated payments made by a direct or indirect partner cannot be claimed by an audited partnership or applied toward any in-lieu-of amount an electing partnership may owe. Direct and indirect partners may not claim or apply any estimated payments made by an audited partnership toward any additional tax the partner may owe pursuant to section 39-22-601.5(3)(c)(III), C.R.S., and paragraph (5) of this rule.

(8) **Alternative Reporting and Payment Methods.**

(a) *Timing and Deadlines.* Application for approval of an alternative reporting and payment method must be made by the audited partnership or tiered partner within the time for election as provided in section 39-22-601.5(3)(d) or (3)(f), C.R.S., as appropriate. The deadlines for filing and payment prescribed in section 39-22-601.5(3), C.R.S., nonetheless apply to any audited partnership or tiered partner that has applied for approval of an alternative reporting and payment method. However, an audited partnership or tiered partner may, when applying for approval of an alternative reporting and payment method, also request an extension under section 39-22-601.5(8)(b), C.R.S.

(b) *Administrative Adjustment Requests.* The provisions of section 39-22-601.5(3)(g), C.R.S., do not apply to final federal adjustments arising from an administrative adjustment request and a partnership may not request an alternative reporting and payment method with respect to such adjustments.