CHAPTER 815

PARTNERS AND PARTNERSHIPS

SUBCHAPTER 1

GENERALLY

§5190. Entity not taxable

A partnership is not subject to the tax imposed by this Part. Persons carrying on business as partners are liable for the tax imposed by this Part only in their separate or individual capacities. This section does not apply to the taxes imposed by chapters 819 and 827 or the tax imposed on partnership audit adjustments pursuant to subchapter 2. [PL 2019, c. 380, §1 (AMD).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 2019, c. 380, §1 (AMD).

§5191. Resident partner -- adjusted gross income

1. Modification in determining the adjusted gross income of a resident partner. Any modification described in section 5122 which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any item is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of that item shall be determined in accordance with the partner's distributive share, for federal income tax purposes, of partnership taxable income or loss generally.
[PL 1989, c. 508, §19 (AMD).]

2. Character of items. Each item of partnership income, gain, loss or deduction shall have the same character for a partner under this Part as it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.
[P&SL 1969, c. 154, §F1 (NEW).]

3. Tax avoidance or evasion. If a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by a special provision in the partnership agreement, the principal purpose of which is the avoidance or evasion of tax under this Part, the partner's distributive share of that item and any modification required with respect to that item must be determined in accordance with the partner's distributive share of the taxable income or loss of the partnership generally, exclusive of items that must be separately computed under the Code, Section 702.
[PL 2011, c. 548, §27 (AMD).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1979, c. 541, §A233 (AMD). PL 1989, c. 508, §19 (AMD). PL 2011, c. 548, §27 (AMD).

§5192. Nonresident partner -- adjusted gross income from sources in this State

1. General. In determining the adjusted gross income of a nonresident partner of any partnership, there shall be included only that part derived from or connected with sources in this State of the partner's

distributive share of items of partnership income, gain, loss and deduction entering into his federal adjusted gross income, as such part is determined under regulations prescribed by the assessor in accordance with the general rules in section 5142.
[P&SL 1969, c. 154, §F1 (NEW).]

2. Itemized deductions. If a nonresident partner of any partnership elects to itemize his deductions in determining his tax liability to this State, there shall be attributed to him his distributive share of partnership items of deduction from federal adjusted gross income.
[PL 1985, c. 783, §32 (AMD).]

3. Special rules as to sources in this State. In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

A. Characterizes payments to the partner as being for services or for the use of capital, or allocated to the partner, as income or gain from sources outside this State, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this State to partnership income or gain from all sources except as authorized in subsection 5; or [P&SL 1969, c. 154, §F1 (NEW).]

B. Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this State than his proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection 5. [P&SL 1969, c. 154, §F1 (NEW).]

[P&SL 1969, c. 154, §F1 (NEW).]

4. Partner's modifications. Any modification described in section 5122, subsection 1 and 2, which relates to an item of partnership income, gain, loss or deduction, shall be made in accordance with the partner's distributive share, for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with sources in this State.
[PL 1979, c. 541, Pt. A, §234 (AMD).]

5. Alternate methods. The assessor may, on application, authorize or may require the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this State, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.
[P&SL 1969, c. 154, §F1 (NEW).]

6. Application of rules for resident partners to nonresident partners. A nonresident partner's distributive share of items of income, gain, loss or deduction shall be determined under section 5191, subsection 1. The character of partnership items for a nonresident partner shall be determined under section 5191, subsection 2. The effect of a special provision in a partnership agreement, other than a provision referred to in subsection 3, having as a principal purpose the avoidance or evasion of tax under this Part shall be determined under section 5191, subsection 3.
[PL 1979, c. 541, Pt. A, §235 (AMD).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1979, c. 541, §§A234,A235 (AMD). PL 1985, c. 783, §32 (AMD).

SUBCHAPTER 2

PARTNERSHIP AUDITS

§5195. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2019, c. 380, §2 (NEW).]

1. Administrative adjustment request. "Administrative adjustment request" means an administrative adjustment request filed by a partnership pursuant to the Code, Section 6227.
[PL 2019, c. 380, §2 (NEW).]

2. Audited partnership. "Audited partnership" means a partnership subject to a partnership-level audit resulting in a federal adjustment.
[PL 2019, c. 380, §2 (NEW).]

3. Composite return. "Composite return" means a Maine income tax return filed by a partnership or pass-through entity on behalf of some or all of its partners, beneficiaries or shareholders under rules adopted by the assessor.
[PL 2019, c. 380, §2 (NEW).]

4. Corporate partner. "Corporate partner" means a partner that is subject to tax pursuant to chapter 817.
[PL 2019, c. 380, §2 (NEW).]

5. Direct partner. "Direct partner" means a partner that holds an interest directly in a partnership or pass-through entity.
[PL 2019, c. 380, §2 (NEW).]

6. Exempt partner. "Exempt partner" means a partner that is subject to the tax imposed by chapter 819 or exempt from the taxes imposed by chapters 803, 809 and 817, except to the extent of unrelated business taxable income.
[PL 2019, c. 380, §2 (NEW).]

7. Federal adjustment. "Federal adjustment" means an adjustment to an item or amount determined under the Code that affects the computation of a taxpayer's Maine tax liability resulting from a partnership-level audit or other action by the IRS or an amended federal return, refund claim or administrative adjustment request filed by a taxpayer.
[PL 2019, c. 380, §2 (NEW).]

8. Federal adjustments report. "Federal adjustments report" means a method or form required by the assessor for use by a taxpayer to report final federal adjustments, including an amended tax return and an information return. A federal adjustments report is a return for purposes of this Title, including for the purpose of determining refund and assessment periods, interest and penalties.
[PL 2019, c. 380, §2 (NEW).]

9. Federal partnership representative. "Federal partnership representative" means the person designated by a partnership or appointed by the IRS to act on behalf of a partnership pursuant to the Code, Section 6223(a) for the reviewed year.
[PL 2019, c. 380, §2 (NEW).]

10. Final determination date. "Final determination date" has the same meaning as in section 5227-A, subsection 2.
[PL 2019, c. 380, §2 (NEW).]

11. Final federal adjustment. "Final federal adjustment" means a federal adjustment for which the final determination date has passed.
[PL 2019, c. 380, §2 (NEW).]

12. Indirect partner. "Indirect partner" means a partner in a partnership or pass-through entity that itself holds an interest directly, or through another indirect partner, in a partnership or pass-through entity.
[PL 2019, c. 380, §2 (NEW).]

13. IRS. "IRS" means the United States Internal Revenue Service.
[PL 2019, c. 380, §2 (NEW).]

14. Nonresident partner. "Nonresident partner" means an individual, trust or estate partner that is not a resident partner.
[PL 2019, c. 380, §2 (NEW).]

15. Partner. "Partner" means a person that holds an interest directly or indirectly in a partnership or pass-through entity.
[PL 2019, c. 380, §2 (NEW).]

16. Partnership. "Partnership" means an entity subject to taxation under the Code, Subtitle A, Chapter 1, Subchapter K other than a financial institution subject to tax pursuant to chapter 819.
[PL 2019, c. 380, §2 (NEW).]

17. Partnership-level audit. "Partnership-level audit" means an examination by the IRS at the partnership level pursuant to the Code, Subtitle F, Chapter 63, Subchapter C that results in federal adjustments.
[PL 2019, c. 380, §2 (NEW).]

18. Pass-through entity. "Pass-through entity" means an entity, other than a partnership, that is not subject to tax under chapter 817 or 819.
[PL 2019, c. 380, §2 (NEW).]

19. Resident partner. "Resident partner" means a partner that is a resident individual or a resident estate or trust under this Part
[PL 2019, c. 380, §2 (NEW).]

20. Reviewed year. "Reviewed year" means the taxable year of a partnership that is subject to a partnership-level audit from which federal adjustments arise.
[PL 2019, c. 380, §2 (NEW).]

21. State partnership representative. "State partnership representative" means a partnership's federal partnership representative for the reviewed year unless the partnership designates in writing another person as its state partnership representative.
[PL 2019, c. 380, §2 (NEW).]

22. Taxpayer. "Taxpayer" has the same meaning as in section 111, subsection 7 and includes a partnership subject to a partnership-level audit or a partnership that has made an administrative adjustment request, as well as a tiered partner of that partnership.
[PL 2019, c. 380, §2 (NEW).]

23. Tiered partner. "Tiered partner" means a partner that is a partnership or pass-through entity.
[PL 2019, c. 380, §2 (NEW).]

24. Unrelated business taxable income. "Unrelated business taxable income" has the same meaning as in the Code, Section 512.
[PL 2019, c. 380, §2 (NEW).]

SECTION HISTORY

PL 2019, c. 380, §2 (NEW).

§5196. Reporting federal adjustments; partnership-level audit and administrative adjustment request

1. General rule. Except in the case of adjustments required to be reported for federal purposes under the Code, Section 6225(a)(2), a partner shall, in accordance with section 5227-A, report and pay any amount due with respect to adjustments arising from a partnership-level audit or other action by the IRS that is reported by the taxpayer on a timely filed amended federal income tax return, including

a return or other similar report filed pursuant to the Code, Section 6225(c)(2), or a federal claim for refund by filing a federal adjustments report with the assessor for the reviewed year and, if applicable, paying the additional tax, penalties and interest due no later than 180 days after the final determination date.

In the case of a partnership with partners required to file a federal adjustments report pursuant to this subsection and included in a composite return or subject to withholding under section 5250-B in the reviewed year, the partnership shall file an amended composite return and amended withholding return as required by the assessor and pay any additional tax, penalties and interest due no later than 180 days after the final determination date.
[PL 2019, c. 380, §2 (NEW).]

2. Authority of state partnership representative. The state partnership representative has sole authority to act on behalf of the partnership for the reviewed year with respect to any action required or permitted under this subchapter, and actions required or permitted under this Title arising from this subchapter, including a request for review pursuant to section 151. The partnership's direct partners and indirect partners are bound by the actions of the state partnership representative. The assessor may establish reasonable qualifications and procedures for designating a person other than the federal partnership representative to be the state partnership representative.
[PL 2019, c. 380, §2 (NEW).]

3. Partnership reporting and payment. An audited partnership is subject to tax with respect to final federal adjustments without regard to the election under the Code, Section 6226(a). The amount of tax is determined as provided in this subsection.

A. An audited partnership shall file a completed federal adjustments report, including the distributive share of the adjustment paid by partners under subsection 1 and other information required by the assessor, and, if subject to tax under this subsection, pay the tax due no later than 180 days after the final determination date. [PL 2019, c. 380, §2 (NEW).]

B. The tax due pursuant to this subsection is determined as follows:

(1) Exclude from final federal adjustments the distributive share of adjustments properly allocable to partners pursuant to subsection 1;

(2) Exclude from final federal adjustments the distributive share of adjustments reported to direct exempt partners not subject to tax on unrelated business taxable income;

(3) For the total distributive shares of the remaining final federal adjustments, remove the portion of such adjustments this State is prohibited from taxing under the Constitution of Maine or the United States Constitution, net of any expenses incurred in production of that income;

(4) For the total distributive shares of the remaining final federal adjustments reported to direct corporate partners subject to tax under chapter 817, and to direct exempt partners subject to tax on unrelated business taxable income, apportion and allocate such adjustments as provided under chapter 821 and multiply the resulting amount by the highest tax rate under section 5200;

(5) For the total distributive shares of the remaining final federal adjustments reported to direct partners that are nonresident partners subject to tax under section 5111 or 5160, determine the amount of such adjustments that is Maine-source income under sections 5142 and 5192 and multiply the resulting amount by the highest tax rate under section 5111 for the applicable tax year;

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

(a) Determine the amount of such adjustments that is of a type that would be subject to sourcing under section 5142, excluding section 5142, subsection 3, and calculate the portion of this amount sourced to this State;

(b) Determine the amount of such adjustments that is income subject to sourcing under section 5142, subsection 3; and

(c) Determine the portion of the amount determined in division (b) that can be established to the satisfaction of the assessor to be properly allocable to indirect partners that are nonresident partners or other partners not subject to tax on the adjustments;

(7) Multiply the total of the amounts determined in subparagraph (6), divisions (a) and (b), reduced by the amount determined in subparagraph (6), division (c), by the highest tax rate under section 5111;

(8) For the total distributive shares of the remaining final federal adjustments reported to resident direct partners subject to tax under section 5111 or 5160, multiply that amount by the highest tax rate under section 5111 for the applicable tax year; and

(9) Add the amounts determined in subparagraphs (4), (5), (7) and (8), along with interest and penalties as provided in sections 186 and 187-B, respectively. [PL 2019, c. 380, §2 (NEW).]

C. Notwithstanding section 5219-H, a partnership may not claim any of the credits in chapter 822 against the tax imposed by this subsection. However, a partnership may claim a credit for income taxes imposed on and paid by the partnership to another state of the United States, a political subdivision of any such state, the District of Columbia or any political subdivision of a foreign country that is analogous to a state of the United States with respect to the distributive shares of the final federal adjustments reported to resident direct partners included in the calculation pursuant to paragraph B, subparagraph (8) and paid by the partnership to this State. The credit under this paragraph is calculated in the same manner as the credit allowed by section 5217-A. [PL 2019, c. 380, §2 (NEW).]

[PL 2019, c. 380, §2 (NEW).]

4. Tiered partners. The direct partners and indirect partners of an audited partnership that are tiered partners, and all the partners of those tiered partners that are subject to tax under section 5111, 5160 or 5200, are subject to the reporting and payment requirements of this section.

[PL 2019, c. 380, §2 (NEW).]

5. Effect of partnership reporting and payment of amounts due. Except for adjustments required to be reported and the tax paid under subsection 1, the proper reporting of final federal adjustments and payment of amounts due by a partnership under subsections 3 and 4 relieves the partners of the partnership of any tax liability resulting from their distributive shares of the adjustments so reported. The direct partners or indirect partners may not take any deduction or credit for this amount or claim a refund of the amount in this State.

[PL 2019, c. 380, §2 (NEW).]

6. Failure of audited partnership or tiered partner to report or pay. Nothing in this section prevents the assessor from assessing direct partners or indirect partners for taxes they owe, using the best information available, in the event that a partnership or tiered partner fails to timely make any report or payment required by this subchapter for any reason.

[PL 2019, c. 380, §2 (NEW).]

SECTION HISTORY

PL 2019, c. 380, §2 (NEW).

§5197. Extensions of time

The time periods provided for in this subchapter may be extended: [PL 2019, c. 380, §2 (NEW).]

1. Automatically for 60 days. Automatically, upon written notice to the assessor, by 60 days for an audited partnership or tiered partner that has 10,000 or more direct partners; or [PL 2019, c. 380, §2 (NEW).]

2. Written agreement. By written agreement between the taxpayer and the assessor. [PL 2019, c. 380, §2 (NEW).]

Any extension granted under this section for filing the federal adjustments report extends the last day prescribed by law for assessing any additional tax pursuant to sections 141 and 5270 and the period for filing a claim for refund or credit of taxes pursuant to sections 144 and 5278 arising from the final federal adjustment. [PL 2019, c. 380, §2 (NEW).]

SECTION HISTORY

PL 2019, c. 380, §2 (NEW).

§5198. Rules

The assessor may adopt rules governing the treatment of part-year residents and other rules necessary to implement this subchapter. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2019, c. 380, §2 (NEW).]

SECTION HISTORY

PL 2019, c. 380, §2 (NEW).

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