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Internal Revenue Service
1111 Constitution Ave. N.W.
Washington, D.C. 20224

Via electronic submission

RE: Instructions for Form 6765

Dear Sir or Madam:

On September 15, 2023, the Internal Revenue Service (the “IRS”) released proposed changes to Form 6765, Credit for Increasing Research Activities (the “Proposed Form”) without accompanying form instructions. Following public comments, on June 21, 2024, the IRS released a revised draft Form 6765 (the “Revised Proposed Form”) without accompanying form instructions. On December 20, 2024, the IRS released proposed changes to Form 6765 Instructions (the “Proposed Form Instructions”) and invited comments on those draft instructions through June 30, 2025. We commend the IRS’s efforts to address the comments previously received and appreciate your willingness to seek additional taxpayer input and consider it in publishing forms and instructions. Nonetheless, there remain substantial issues with the Revised Proposed Form and the Proposed Form Instructions. On behalf of Tax Executives Institute, Inc. (“TEI”), I am pleased to provide feedback on the Proposed Form Instructions.

About TEI

TEI was founded in 1944 to serve the needs of business tax professionals.¹ Today, the organization has 55 chapters in North and South America, Europe, and Asia. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our nearly 6,000 individual members represent over 2,900 of the leading companies around the world.

¹ TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6). All “section” references are to the Internal Revenue Code of 1986, as amended (the “Code”).

TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the benefit of both government and taxpayers. These goals can be attained only through the members' voluntary actions and their adherence to the highest standards of professional competence and integrity. TEI is committed to fostering a tax system that works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the Proposed Form Instructions.

TEI Comments

We appreciate the opportunity to provide comments on the proposed instructions for Form 6765, Credit for Increasing Research Activities. Form 6765 Instructions are used by taxpayers to instruct them on how to file the Form 6765 to claim the credit for increasing research activities and to elect the reduced tax credit under section 280C.² They thus fill an important role in ensuring that taxpayers understand their filing obligations and the IRS's expectations.

The Revised Proposed Form 6765 released on June 21, 2024, addressed many of the issues we raised in our prior letter to the Secretary regarding the draft Form 6765 released on September 15, 2023.³ Our comments and recommendations herein highlight areas and issues requiring further guidance under the Revised Proposed 6765 and Proposed Form Instructions. While we acknowledge that the IRS is attempting to address concerns over problematic credit claims through the proposed changes to Form 6765 and accompanying instructions, we continue to believe the current approach requires refinement. We understand that prior questionable research credit claims have placed a significant burden on IRS resources, as evidenced by the significant amounts of research credit litigation and the reports of enhanced audit activity. However, the instructions' application of these burdensome requirements imposed by the Revised Proposed Form 6765 to original returns does not strike the appropriate balance between preventing unwarranted credits and allowing the IRS to effectively administer the credit while encouraging legitimate claims.

The instructions and Revised Proposed Form 6765, as currently drafted, would apply to all taxpayers, including the vast majority who claim the credit responsibly, especially independently audited public reporting entities that comply diligently with the Code and regulations and make research credit claims on their original returns. As we explain in more detail below, the detailed reporting requirements outlined in these instructions will not materially improve the IRS's ability to detect questionable claims for case selection purposes. Instead, they will significantly increase the compliance burden on responsible taxpayers with no concomitant benefit to the IRS's efforts to ensure compliance. Specifically, the instructions detail requirements for completion of the Revised Proposed Form 6765, including categorizing complex business components into oversimplified single descriptors, that exceed statutory and regulatory requirements. This excessive documentation burden will likely prevent many taxpayers with legitimate claims from accessing the credit.

The Proposed Form Instructions state the estimated burden for individual and business

² All "section" references are to the Internal Revenue Code of 1986, as amended (the "Code").

³ TEI's prior letter regarding the draft Form 6765 released on September 15, 2023, is available at: <https://www.tei.org/advocacy/submissions/tei-submits-comments-form-6765-credit-increasing-research-activities>.

taxpayers to file the Revised Proposed Form 6765, noting an estimate of 10 hours and 31 minutes for recordkeeping, 2 hours and 25 minutes for learning about the law or the form, and 5 hours and 6 minutes for preparing and sending the form to the IRS. These time estimates are unrealistic. They appear to be unchanged from estimates provided in prior versions of the form instructions and do not accurately reflect the significant increased compliance burden presented by the Revised Proposed Form 6765 and Proposed Form Instructions.

General Comments

Reporting of Business Components used in Statistical Sampling. For many taxpayers, statistical sampling of research activities in accordance with Rev. Proc. 2011-42 is essential for preparing accurate tax returns. They may have thousands of business components and millions of pages of supporting materials, which would be exceedingly costly and labor intensive to review in connection with preparing one's return. The Revenue Procedure recognizes that and thus provides permission to use statistical sampling. The IRS has valid reasons for accepting statistical sampling for research credit claims. Sampling provides a scientifically valid method for determining Qualified Research Expenses (QREs) when examining large populations of business components, and Rev. Proc. 2011-42 establishes clear standards that ensure reliability. Statistical sampling can reduce the administrative burden for both taxpayers and the IRS, while maintaining accuracy, allowing for efficient examination of research credit claims. This approach aligns with other areas of tax compliance where the IRS accepts statistical sampling and provides a practical solution for taxpayers to comply with the new business component reporting requirements.

It is imperative that the instructions explain clearly how those taxpayers that rely on proper statistical samples should fill in Form 6765. The IRS should thus consider enhancing the statistical sampling instructions for Section G of Form 6765 to provide clearer guidance and ensure proper documentation of qualified research activities. These improvements would maintain the integrity of the research credit while offering taxpayers a practical approach to comply with the new business component reporting requirements.

A key area for clarification is the business component reporting requirements when using statistical sampling. The instructions should explicitly state that taxpayers must still detail either their top 50 business components or those representing 80% of QREs, whichever is less. However, for originally filed returns utilizing statistical sampling, it would be more administrable to apply these thresholds to the items in the sample rather than the entire population of business components. This approach would provide a more accurate representation of the sampled data, which is what the IRS would review in an examination and reduce unnecessary reporting burden.

Also, if an originally filed tax return meets all established requirements consistent with Rev. Proc. 2011-42, then the filing of the form should constitute acceptance of the statistical sample by the IRS.

By incorporating these recommendations, the IRS can provide taxpayers with clearer, more comprehensive guidance on using statistical sampling for research credit claims, thereby improving compliance and facilitating more efficient processing of Form 6765.

Issues with the Proposed Form's Current Design and Instructions. We reiterate several recommendations from our prior letter that were not adopted in the Revised Proposed Form 6765

released on June 21, 2024, or the Proposed Form Instructions, as described below.

The Proposed Changes Will Not Increase Compliance or Ease Case Selection. When the Proposed Form 6765 was released on September 15, 2023, the IRS's stated objectives for the proposed changes include "helping taxpayers meet their obligations and using enhanced data and analytics to operate more efficiently and select the highest risk cases." However, no versions of the Proposed Form or the Proposed Form Instructions explain how this new form will aid taxpayers in meeting their tax obligations, and the overwhelming compliance burden imposed by the changes on large taxpayers far outweighs any informational benefits those changes could conceivably have.

The changes to the Proposed Form 6765 and Proposed Form Instructions also will not yield information of appreciable value to the IRS. To the best of our knowledge, the IRS presently has no mechanism to evaluate the volume of information it is requesting to risk assess returns. Even if it did, the information is not useful for risk assessment, as one cannot form a reasonable initial judgment about the risk with respect to, or qualification of, complex, inventive projects, from a brief description of the work. Obtaining the names of projects and a highly simplified description of each will be of little value to the IRS. A project described in a mundane matter-of-fact fashion may involve overwhelming innovation, while something that sounds innovative may be no more than plugging and playing existing technology. Any effort to make audit selections based on brief descriptions will invariably omit some weaker activities and focus time on projects that actually are very low risk.⁴ Thus, the information sought is insufficient to allow IRS personnel to make meaningful judgments.⁵

Other Legal Issues. The form and instructions also do not consider a number of other legal issues. For example, lines 50-52 ask for information that seeks to separate research activities that constitute direct research from those that represent direct support or supervision of research. Those questions seem to indicate that the IRS views direct research as somehow different from direct supervision and direct support of research. The statute and regulations do not allow such a distinction, and the U.S. Court of Appeals for the Seventh Circuit has ruled that such a distinction has no basis in the law.⁶ Taxpayers should not be asked for information that does not affect their qualification for the credit and that the law would therefore not require them to keep. At the very least, any changes to the form would need to make an accommodation for the rule under *Golsen v. Commissioner*⁷ and exempt taxpayers within the Seventh Circuit from completing those questions, since that is not information they must maintain.

Another legal concern is that some of the research performed by large taxpayers is classified or restricted for national security reasons. Those projects have strict rules about the disclosure of information that could make it difficult, if not impossible, for the taxpayer to provide information

⁴ The Proposed Form does not take into account the complexity and challenges of modern research. On audit, similar concerns have arisen around determinations based on brief project descriptions that should be avoided at the tax return stage as well.

⁵ Increasing the amount of information requested will not solve this problem. Not only would doing so impose an intolerable burden on taxpayers, but it also would result in thousands of pages of return information from research intensive corporations that would increase the burden on the IRS as well and which the IRS lacks the resources and capability to evaluate meaningfully.

⁶ *Little Sandy Coal v. Comm'r*, 62 F.4th 287 (7th Cir. 2023).

⁷ 54 T.C. 742 (1970).

about classified or restricted business components on a tax return without violating the law. Even if it were permissible to provide the information, it would be visible to a wide variety of IRS personnel, many (if not most) of whom would lack the necessary security clearances to view the information. The proposed changes do not take into account these considerations and thus penalize research in the national security and defense sectors.⁸

Other Comments on Specific Items and Lines

Item B Attachment: This attachment requires duplicative information of some of the information already provided on Form 851 (Affiliations Schedule). In addition, the attachment would require taxpayers to split the base period among subsidiaries which, ultimately, should not matter in a consolidated group context. We request consolidated group members be excluded from this reporting requirement.

38: In reporting “officers’ wages,” the use of state law in the state of incorporation to determine who is an “officer” is unnecessarily burdensome. If a taxpayer with multiple subsidiaries claims QREs for a subsidiary, the taxpayer will have to check the definition of “officer” in each state in which a subsidiary is incorporated. The amount of officers’ wages does not provide a reliable indication of risk without context about the roles of the officers or the size of the business. Moreover, taxpayers who rely on statistical sampling may not be able to identify the amount of officers’ wages in a population item that is not a sample unit.

39: The instructions do not define “major” in the context of reporting “major acquisitions or dispositions.” Furthermore, the instructions appear to require that all acquisitions and dispositions be reported as they ask if “any” QREs are related to an acquisition or disposition. The instructions are drafted in a way that does not make it clear whether the request is for QREs conducted by the business disposed of or acquired or QREs conducted with respect to the acquisition or disposition itself.

40: The term “new categories of expenditures” also may be open to different interpretations. For example, if a taxpayer does not have a specific category of expenditure in the current year but has had it in the past, is it considered “new” the next time the taxpayer has it again? The Proposed Form Instructions for Line 40 refer to the *Special Rules* section, which does not include a definition of “new categories of expenditures” but includes the following statement: “For special rules concerning the allocation and apportionment of research and experimental expenses between U.S. and foreign source income, see sections 861 through 864.” We believe it is inappropriate to include references to sections 861 through 864 in Form 6765, which is a tax form specific to the Credit for Increasing Research Activities and has no bearing on the allocation and apportionment of expenses between U.S. and foreign source income.

49(d): The drop-down list does not allow proper classification of projects; for example, there are business components that fit within multiple categories, such as products, software, and inventions, as well as combined hardware and software. One cannot choose a single word to describe an effort when three or four choices apply. Moreover, the same basic rules apply to all types of

⁸ Some of the information requested also may be proprietary and subject to privacy concerns, such as information regarding competitive advantages, pricing, new products, and patent requests, among other things.

products, software, and inventions, so the distinction does not provide useful information (except perhaps for possible IUS).

49(e): The IUS drop-down is unduly complex and unreasonable – there could be software that may or may not be IUS based upon a good faith, reasoned application of the law; no taxpayer in that circumstance will label it as IUS and thus be taken to have made an admission. As long as there is a reasonable basis for concluding that a project is not-IUS, that will likely be the option selected. Therefore, this request will give the IRS little useful information. Further, the Proposed Form 6765 and Proposed Form Instructions require complex business components to fit into predefined categories that may not adequately capture their nature, resulting in oversimplifications of intricate technical developments into basic classifications.

TEI Request

Given the substantial concerns outlined above, TEI requests that the IRS postpone implementation of the Proposed Form and Proposed Form Instructions and instead directly engage with taxpayers about how to report the research credit in a way that is workable for taxpayers and that provides the information value to the IRS, which is the intention of these form changes. TEI would be pleased to participate in such conversations and can offer varied perspectives from a wide variety of corporate taxpayers across industries. If the IRS proceeds with implementation of the Proposed Form and Proposed Form instructions, we encourage the IRS to consider the comments in this letter.

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TEI appreciates the opportunity to comment on the Proposed Form Instructions. TEI's comments were prepared under the aegis of the Tax Reform Task Force, whose Chair is Andreia Verissimo. Should you have any questions regarding TEI's comments, please do not hesitate to contact Andreia Verissimo at alveriss@amazon.com or TEI Tax Counsel Kelly Madigan at kmadigan@tei.org.

Respectfully submitted,

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