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Via Email: [lbief.15307@irs.gov](mailto:lbief.15307@irs.gov)

RE: Comments on Draft Form 15307 and the IRS's Ongoing Efforts to Refine the Scope of Taxpayers Eligible for the Special Disclosure Process

Dear Sir or Madam:

Thank you for this opportunity to comment on draft Form 15307, which the IRS is developing to standardize the process for making Revenue Procedure 94-69 disclosures. TEI's membership includes tax professionals with passionate and vested interests in accurate return preparation and efficient tax administration and extends to the vast majority of large business taxpayers that will continue to be in some form of continuous audit posture with the IRS. The IRS's acknowledgment of the continuing utility of the Revenue Procedure 94-69 disclosure process is encouraging. This decision aligns with TEI's outreach to its membership, as well as their Exam teams, which revealed, in no uncertain terms, that the procedure plays a critical and positive role in large business taxpayer examinations. A role that extends far beyond the penalty protection that lies at its core.

Importantly, the procedure simplifies audits, promotes transparency and collaboration between taxpayers and Exam teams, provides a mechanism for resolving issues at the lowest possible level, and eliminates the need to file qualified amended returns and the attendant amended state and local returns. TEI made these points and many others in a comment letter submitted to the IRS on October 16, 2020. (Copy attached.) We will not repeat the same points in this letter but encourage IRS decision-makers to revisit the detailed policy rationales presented therein when defining the scope of the updated procedure in future guidance.

The stated purpose of draft Form 15307 is to standardize the disclosure process so eligible taxpayers and revenue agents will have consistent guidelines around what

constitutes an adequate disclosure. We have provided detailed comments below that are intended to eliminate confusion and uncertainty when describing adjustments in the form. Before doing so, however, we address our more fundamental concerns surrounding the proposed consequences of a deemed failure to provide adequate disclosures, which is addressed in the last section of the form instructions.

### **Fundamental Concerns Surrounding Deemed Failures to Provide Adequate Disclosure and Revocations of a Taxpayer's Ability to Use the Form for Current and Future Years**

The draft form section entitled, Failure to Provide Adequate Disclosure, provides that a failure to satisfy the adequate disclosure requirements will result, not only in the taxpayer losing protection from accuracy-related penalties in the tax year in issue, but also in the taxpayer being "ineligible from utilizing Form 15307 for a set period of time [TBD]." We appreciate the IRS is seeking to encourage improved disclosures through this limitation. The rule is overly harsh, however, and disregards the positive benefits Exam teams receive when taxpayers voluntarily disclose adverse return adjustments. Further, the ability of a revenue agent to essentially revoke a taxpayer's right to use the procedure in the current and future years will almost certainly result in disputes concerning the validity of the agent's judgment and create a hostile environment for the entire examination. Thus, we urge the IRS to eliminate this limitation and instead adopt the approach taken in Publication 5125 for informal refund claims that do not meet the standards of Treasury Regulation Section 301.6402-2.

Under this approach:

LB&I will discuss deficiencies not meeting the Treasury Regulations and provide the taxpayer an opportunity to correct the deficiencies. LB&I will not act on an incomplete or otherwise invalid claim for refund.

Publication 5125, p. 2. Such an approach aligns with the collaborative policy underlying Revenue Procedure 94-69 and will avoid the unnecessary disputes that would accompany the current limitation in the draft form. If the IRS is concerned about undue delay in curing deficiencies, then a temporal limitation could be added, for example, taxpayers that do not cure deemed inadequacies within fifteen working days of receiving notice thereof will not be entitled to penalty protection in the tax year in issue in the inadequate form.

If the IRS decides to retain the future year limitation, we recommend a formalized process that allows taxpayers to cure deemed inadequacies within a defined period after receiving notice thereof, which is the current practice conducted by taxpayers and Exam teams. If disputes remain, the formalized process should require a senior member of the Exam team, for example a Territory Manager, to review and approve or negate the preliminary inadequacy determination.

In addition, and regardless of whether a limitation remains in the form, we recommend addition of a list of objective factors to the form instructions clearly articulating what constitutes adequate disclosure for this purpose. The examples in the draft form are useful, but an objective listing of factors the IRS will use to evaluate the adequacy of disclosure would reduce the likelihood of disputes.

### Comments on Draft Form Line Items

We offer the following comments to reduce confusion and uncertainty when describing adjustments in the form:

- Tax adjustments can be quite complicated and are certain to change with amendments to the Internal Revenue Code. Thus, it would be helpful to offer an “Other” option in each of the line items that provide drop-down boxes together with an opportunity to describe the particular characteristic in a continuation sheet.
- The line item, “Timing,” provides options for Temporary, Temporary 1-3 years, Temporary 3-10 years, and Others. We recommend eliminating “Temporary” because there is no apparent reason for including that option. If there is a reason, it should be articulated in the instructions. The form should also have instructions explaining how taxpayers should provide information when “Others” is selected.
- Options provided in the line item, “Form,” are incomplete. In addition, it is not possible to select more than one option when an adjustment impacts multiple forms, for example, Form 1120 and Schedule M-3.<sup>1</sup> This could be addressed by providing a line item for, “Return Form,” with appropriate options and another line item for, “Sub-form or Schedule,” that allows the taxpayer to insert the appropriate name rather than providing drop-down options.
- TEI members reviewing the draft form were confused by the line items for “Increase (Decrease) to Taxable Income” and “Increase (Decrease) to Tax Credits.” As noted above, Publication 5125 provides procedural rules for disclosing informal refund claims to Exam teams. To avoid confusion, Form 15307 should specifically indicate whether taxpayers are expected to use the form to disclose positive adjustments that decrease taxable income or increase credits and, if so, how the procedural rules in Publication 5125 interact with procedural rules for Form 15307. If not, the line items for “Increase (Decrease) to Taxable Income” and “Increase (Decrease) to Tax Credits” should be revised to eliminate “(Decrease).”

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<sup>1</sup> Other examples of common adjustments impacting multiple forms or schedules include: an adjustment to foreign tax credits impacts Form 1120, page 1, line 32, Schedule J, and Form 1118; an adjustment to capital gain/loss impacts Form 1120, page 1 line 8, Schedule D, and Schedule M-3; an adjustment to depreciation impacts Form 1120, page 1, line 20, Form 4562, and Schedule M-3; an adjustment to dividends impacts Form 1120, page 1, line 4, Schedule C, and Schedule M-3.

- The draft form does not cover important details, such as:
  - how or when Form 15307 should be filed with the IRS;
  - whether one form would be filed for all adjustments or one adjustment per form;
  - how to report adjustments involving disregarded entities which would necessarily be an adjustment to their parent, which, in turn, would roll-up to the ultimate parent of the consolidated group; and
  - the process for adding continuation sheets to provide supplemental information.

We appreciate the challenges involved in creating a static form that anticipates the myriad of details that have historically been handled in the flexible Revenue Procedure 94-69 process. The greater the adverse consequences of a deemed failure to provide adequate disclosure in Form 15307 (as currently drafted, the consequences are severe), the greater the importance of anticipating and addressing all such details in the form.

TEI appreciates the opportunity to comment on draft Form 15307. Our members have extensive experience utilizing Revenue Procedure 94-69 to improve the efficiency and transparency of audits, and we would greatly appreciate the opportunity to comment on revisions made to the draft form and future guidance updating the procedure prior to formal action being taken. To do so, please contact TEI's Chief Tax Counsel, Patrick Evans, on 202.464.8351 or [pevans@tei.org](mailto:pevans@tei.org).

Respectfully submitted,  
TAX EXECUTIVES INSTITUTE, INC.



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