TAX EXECUTIVES INSTITUTE, INC.

State and Local Tax Policy Statement
Regarding Statutes of Limitation

Two types of statutes of limitation affect corporate taxpayers: (1) statutes of limitation limiting the standard period for tax assessments and taxpayer refund claims, and (2) statutes of limitation extending the standard period for assessments and refund claims when a taxpayer reports changes from a federal tax return examination or on an amended return. TEI recommends states adopt the following guidelines and procedures to provide taxpayers with certainty and consistency:

A. Uniform Period for Assessments and Refund Claims

Statutes of limitation serve a dual purpose. First, they limit the time for a jurisdiction to seek additional taxes through their examination process. Secondly, yet equally important, they limit the time for a taxpayer to recover taxes erroneously remitted or improperly assessed. Thus, statutes of limitation provide needed certainty for taxpayers and governments alike.

Statutes of limitation for assessments are often longer than statutes of limitation for refund claims. Moreover, some taxes have no limitation period at all. This lack of parity creates an uneven playing field and creates a perception of unfairness. TEI maintains statutes of limitation for assessments and refund claims should be equal and should apply on the later date of (i) taxes paid or (ii) returns filed. A uniform period limiting assessments and refund claims provides parties with greater certainty and is in accord with sound tax policy.

B. Suspension of Statutes of Limitations by Unilateral Administrative Action

A few jurisdictions permit tax authorities to toll statutes of limitation for assessments by unilateral administrative action (e.g., the mailing of a notice of examination). TEI maintains that unilateral administrative actions should only toll statutes of limitation for a reasonable, limited period.

C. Statutes of Limitation - Federal Changes

In general, taxing jurisdictions may issue assessments for periods otherwise barred by the standard statute of limitation if the taxpayer owes additional tax because of the Internal Revenue Service's examination of the taxpayer's federal tax return or the taxpayer's amendment of its federal tax return. Most jurisdictions limit such assessments to the tax resulting from the federal change. However, some

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jurisdictions reopen the entire period and allow assessments of tax unrelated to the federal change, even though the standard limitation period has closed.

TEI maintains unless a taxpayer has signed an agreement extending/modifying the jurisdiction's statute of limitation, the jurisdiction's assessment should be limited to the impact of the federal changes on the taxpayer's tax liability. Statutes of limitation are intended to provide taxpayers with certainty that their tax liabilities are final. Allowing jurisdictions to reopen and reaudit all aspects of a return simply because the taxpayer reported a federal change frustrates the purpose of statutes of limitation.

Moreover, in the event a federal change creates a state tax refund for a taxpayer, the statute of limitations for reporting the federal change, rather than the standard limitation period, should apply to claim that refund. This ensures a uniform limitation for overpayments and underpayments and provides fairness to the taxpayer as well as the jurisdiction.

Finally, federal changes resulting from the Internal Revenue Service's examination of the taxpayer's federal tax return or the taxpayer's amendment of its federal tax return generally trigger state reporting obligations in all jurisdiction in which the taxpayer files a return. States diverge, however, regarding (1) the period of time within which to report the changes, (2) the specific events or actions triggering the reporting requirement, and (3) the form or format required to report the federal adjustments. This lack of consistency/uniformity/conformity makes it difficult for taxpayers to comply with each jurisdiction's requirements. As outlined in further detail in TEI's Policy Statement Regarding the Reporting of Federal Income Tax Changes, TEI maintains that states should adopt a standard period of 180 days to report federal income tax changes to state tax authorities.

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