October 19, 2020

Large Business and International (LB&I) Division
Attention: Commissioner Douglas W. O'Donnell and Deputy Commissioner Nikole C. Flax
Internal Revenue Service (I.R.S.)
1111 Constitution Avenue,
NW Washington, DC 20224

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Attn: SE:LB
1111 Constitution Avenue, NW
Washington, DC 20224

Via Email to lbi.lcc.program@irs.gov

RE: Comments on Revenue Procedure 94-69

Dear Commissioner O'Donnell and Deputy Commissioner Flax:

The undersigned associations appreciate the opportunity to provide comments on the proposal released August 19, 2020, to declare Revenue Procedure 94-69 ("Rev. Proc. 94-69") obsolete. As is more fully explained below, our member companies do not agree with the proposal.

Under §6662,[1] the general rule is a taxpayer has until the time the taxpayer is first contacted by the IRS and notified that a tax return is under examination to submit an amended tax return or make other adequate disclosures of errors on their originally filed tax return. A taxpayer doing so will not be subject to certain accuracy related penalties with respect to any additional tax due shown on the amended return or with respect to which adequate disclosures are made. Such amended returns are considered "qualified amended returns." Rev. Proc. 94-69 allows taxpayers who are under continuous audit to avoid the imposition of certain penalties by submitting a written statement within 15-days after receipt of an information request from the IRS, describing all items that would result in adjustments if the taxpayer were to file a properly completed amended return. Pursuant to Rev. Proc. 94-69, such written statements are treated as qualified amended returns. The ability to treat such written statements and disclosures as qualified amended returns and thus avoid certain accuracy related penalties provides an incentive for taxpayers to make the statements and disclosures. In turn, receipt of such statements by the IRS conserves considerable resources by eliminating work that would be otherwise required to identify, analyze and examine such items. Moreover, such items might never be identified and examined at all without disclosure under Rev. Proc. 94-69.

[1] Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

The primary reason given for declaring Rev. Proc. 94-69 obsolete is the termination of the formal IRS examination programs under which certain taxpayers were under continuous audit. These formal programs were replaced by the Large Corporate Compliance ("LCC") Program, which selects large taxpayers for examination based on their risk profiles. The LCC is not premised on the assumption of a continuous audit. However, as the IRS advisory also indicated, the LCC may result in the examination of a small number of taxpayers in consecutive years due to continuous selection. At least for this small population of taxpayers, the policy underpinning the revenue procedure remains; due to potential continuous selection under the LCC program, such taxpayers may have little or no opportunity to file qualified amended returns between the filing of their original return and notice of audit selection under the LCC program. In addition, these taxpayers are typically in the middle of an examination of the previous audit cycle when discussions begin relating to selection under LCC scoping of the next audit cycle. Importantly, it should be clarified that the notification of selection into the LCC program is not a triggering event for an untimely qualified amended return under Treas. Reg. § 1.6664-2(c)(3)(i)(A). This merits retaining Rev. Proc. 94-69, providing clarity in the process and providing these taxpayers an opportunity to avail themselves of qualified amended returns.

However, focusing on the continuous examination policy underpinning of the revenue procedure obscures the broader benefits it confers in terms of promoting efficiencies for both taxpayers and the IRS in the conduct of examinations. Without Rev. Proc. 94-69, large taxpayers would be put in the position of either filing an amended return every time they discovered an error on a previously filed return or bearing the risk that penalties may be imposed, because they do not know whether the next day's mail will include a notice of examination from the IRS. These amended returns, especially for LCC taxpayers, are incredibly complex with re-computations taking days or even weeks to process and returns running to many thousands of pages. These highly complex returns are then filed with the Service Center and they take time to process. The IRS Advisory Council 2015 Public Report, which addressed this specific issue, described the problem as follows:

> Obviously, if the CIC program were ended, a taxpayer could still make a valid disclosure by filing an actual qualified amended return. Given the administrative burdens of filing a formal amended return (including correlative burdens related to satisfying state, foreign, and financial reporting filing requirements), the IRSAC believes there is significant potential for the number and quality of disclosures to decline.[2]

The qualified amended return treatment for disclosures made during an examination makes for an administrable alternative to the filing of formal amended returns for large taxpayers to disclose adjustments to the IRS, without requiring re-computations until completion of a full audit. This provides a reason not only for retaining Rev. Proc. 94-69, but potentially expanding the population of taxpayers eligible for its use beyond those taxpayers under consecutive or continuous examination.

Declaring Rev. Proc. 94-69 obsolete also ignores the administrative burden it would visit on taxpayers who otherwise are generally required to file amended state income tax returns every

[2] https://www.irs.gov/pub/irs-utl/2015-IRSAC-Full-Report.pdf. See pp. 108-12.

time they filed an amended federal return. Many large taxpayers file income tax returns in all 44 states with an income tax and for them this burden is compounded, potentially many times over in states with separate company or non-unitary regimes. The qualified amended return procedure permitted by the revenue procedure generally allows taxpayers to wait until the federal audit is complete before filing a single amended return with the states.

Additionally, now is not an appropriate time to abandon the revenue procedure that has been in place and has been working well for over 35 years. The Tax Cuts and Jobs Act ("Act"), enacted in 2017, caused a sea change in many elements of the Internal Revenue Code. The IRS and Treasury continue to release guidance on these changes almost three years later. Taxpayers continue to digest the myriad changes to the tax laws and, because of the lag between the passage of the Act and the release of published guidance, taxpayers may not have filed their original returns in line with current guidance. For this reason alone, Rev. Proc. 94-69 is not yet obsolete.

With regard to the assertion in the advisory that the revenue procedure "does not support the broader tax administration effort to improve the accuracy and reliability of returns at the time of filing," we do not believe it does anything to undermine the already existing motivations to achieve accuracy and reliability. Taxpayers already file their tax returns under strict penalties of perjury, and large corporate taxpayers are further motivated to accuracy under generally accepted accounting principles, financial reporting regulations, shareholder interests, and Schedule UTP. The factor having the largest impact on the accuracy and reliability of original returns is complexity and changes in the regulatory and interpretative environment that occur shortly before and after a return is filed add to that challenge. Rev. Proc. 94-69 ensures that taxpayers with large and complex returns are able to efficiently report and fix errors. Thus, Rev. Proc. 94-69 encourages compliance rather than undermining it. This combined with its other benefits weighs in favor of retaining it.

Furthermore, we do not agree with the advisory's observation that restriction on use of the revenue procedure to a small group of large corporate taxpayers creates disparity among the LB&I filing population. As noted above, certain of these taxpayers are uniquely situated and there is clear justification for providing them treatment under the revenue procedure. Nevertheless, if the goal is to create uniform treatment with respect to qualified amended returns, the better way to reduce the disparity would be to expand the population of taxpayers eligible for its use, not eliminate it. By expanding the revenue procedure, the IRS and taxpayers can take advantage of its resource conservation on a broad scale.

For the reasons set forth above, we urge that you both retain and expand the eligibility for use of Rev. Proc. 94-69.

Sincerely,

Alliance for Competitive Taxation
American Chemistry Council
American Council of Life Insurers
American Fuel & Petrochemical Manufacturers

American Property Casualty Insurance Association
American Trucking Associations
Business Roundtable
CTIA
Information Technology Industry Council
National Association of Manufacturers
National Foreign Trade Council
Reinsurance Association of America
Retail Industry Leaders Association
Software Finance and Tax Executives Council
U.S. Chamber of Commerce
United States Council for International Business
USTELECOM - The Broadband Association

cc: Charles P. Rettig, Commissioner, Office of the Commissioner, Internal Revenue Service, U.S. Department of the Treasury

David J. Kautter, Assistant Secretary, Office of Tax Policy, U.S. Department of the Treasury

William M. Paul, Deputy Chief Counsel (Technical), Office of the Chief Counsel, Internal Revenue Service, U.S. Department of the Treasury

Krishna Vallabhaneni, Tax Legislative Counsel, Office of Tax Legislative Counsel, U.S. Department of the Treasury

Brett York, Deputy Tax Legislative Counsel, Office of Tax Legislative Counsel, U.S. Department of the Treasury

Jeffrey Van Hove, Senior Advisor, Office of Tax Policy, U.S. Department of the Treasury