

## NEW Large Business & International (LB&I) SAFE HARBOR

Douglas W. O'Donnell,  
Commissioner, LB&I Division.

IRS admits determining the correct amount of R&D tax credits imposes a significant burden on taxpayers and LB&I examiners.

IRS says new directive provides "efficient manner" for determining QREs for LB&I taxpayers that meet the requirements.

[LB&I Control No. LB&I-04-0917-005 Impacted IRM 4.51.2](#)

### Directive



The Directive provides an administrative solution to accept as sufficient evidence of QREs the **Adjusted ASC 730 Financial Statement R&D** for the credit year.

Adjusted ASC 730 Financial Statement R&D is made up of the research and development costs currently expensed on a taxpayer's Certified Financial Statements pursuant to ASC 730 for U.S. GAAP purposes and includes certain specified adjustments made to ASC 730 Financial Statement R&D.

#### Directive Requirements

- Only applies to LB&I taxpayers (i.e., assets equal to or greater than \$10 million) who follow U.S. GAAP
- Must show currently expensed ASC 730 Financial Statement R&D as a separate line item on the income statement or show separately stated note



#### **MASSIE ADVICE:**

If the taxpayer complies with the certification requirements, LB&I examiners will not challenge QREs which are the Adjusted ASC 730 Financial Statement R&D costs for the credit year. QREs over the safe harbor are subject to an IRS risk assessment to determine the scope of an examination, if warranted. We are advising clients to cautiously evaluate the requirements and definitions in the directive and begin discussions with your GAAP auditors to better understand ASC 730 and how it applies to your financial statements. There are reasons why taxpayers would not want to follow the Directive.

The Directive only applies to **original returns** timely filed (including extensions) on or after the date of this Directive (Sept. 11, 2017) for LB&I taxpayers who choose to follow the terms of the Directive.

## CERTIFICATION STATEMENT

Taxpayers may voluntarily attach a completed and signed Certification Statement Claiming Adjusted ASC 730 Financial Statement R&D as QREs ("Certification Statement" - Appendix A) and Appendices B, C, & D (see below) to their Federal income tax return to demonstrate their eligibility under the Directive.

If the documents are not voluntarily attached to the return, the audit team at the beginning of the examination of the Research Credit will verify whether the Taxpayer followed or plans to follow the Directive. For Taxpayers choosing to follow the Directive, the exam team will then request Taxpayer to provide the completed disclosure statements (Appendices A – D) below.

Appendix A	Certification Statement Claiming Adjusted ASC 730 Financial Statement R&D as QREs
Appendix B	Reconciliation of Form 6765 QREs to Adjusted ASC 730 Financial Statement R&D (Reconciliation should include a breakdown of costs as detailed in Appendix B)
Appendix C	Computation of Adjusted ASC 730 Financial Statement R&D
Appendix D	Adjusted ASC 730 Financial Statement R&D Wage Detail

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