



Industry Director Directive #2 on Research Credit Claims

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR INDUSTRY DIRECTORS
DIRECTOR, FIELD SPECIALISTS
DIRECTOR, PRE-FILING AND TECHNICAL GUIDANCE DIRECTOR, INTERNATIONAL COMPLIANCE, STRATEGY AND POLICY

FROM: Patricia C. Chaback /s/ Patricia C. Chaback
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SUBJECT: Tier I Research Credit Claims Issue Directive #2

This memorandum provides direction on the Tier I Research & Experimentation Credit Claims Issue or more commonly referred to as Research Credit Claims or "RC Claim" Issue. Effective September 4, 2007, Lavena B. Williams, Director, Field Operations-East was appointed as the Issue Owner Executive.

Background/Strategic Importance

This directive supplements the guidance provided in Industry Director Directive #1 dated April 4, 2007. Directive #2 addresses:

1. the definition of a claim covered under the Tier I designation,
2. the issuance of the Mandatory Research Credit Claim Information Document Request ("Mandatory IDR") under certain circumstances,
3. the notice of centralized filing, and (4) the assertion of penalties under I.R.C. §6676.

Research credit claims continue to be filed using marketed tax products supported by studies. The Issue Management Team (IMT) has concerns that some studies used to support RC Claims lack adequate documentation, use high-level estimates which are based upon invalid assumptions and lack nexus between qualified research expenses (QREs) and the business component. In addition, some studies are prepared on the contingency fee basis where the taxpayer may have little financial risk if a claim is not allowed. The Mandatory IDR is designed to identify the above attributes, determine the audit techniques needed to address the RC Claims, and eliminate the need to perfect the taxpayer's claim.

Planning and Examination Guidance

RC Claims covered under Tier I

All RC Claims are covered under the Tier I designation and are subject to the direction of the Issue

Owner Executive. An RC Claim is a claim for credit or refund of an overpayment of tax for a taxable year generated, in whole or in part, by the research credit and not taken into account on a taxpayer's original return.

Examination of RC Claims

Once an RC Claim is selected by classification and forwarded to the field, the following procedures apply:

1. **If the RC Claim is not currently under examination** – These RC Claims are not subject to mandatory examination. Examination teams will perform a risk assessment to determine if the RC Claims should be examined or surveyed. Compliance factors to be considered include: adjustment potential, future year impact, resources, and the abusiveness of the research credit claim. ([IRM 4.46.3.3.2.2, "Risk Analysis and Risk Management"](#)). If it is determined that the RC Claim will be examined, then the examination team will be required to issue the Mandatory IDR.
2. **If the RC Claim is currently under examination** - Examination teams are required to issue the Mandatory IDR if the examination has not progressed beyond the mid-point of the examination.
3. **If the RC Claim is currently under examination and has progressed beyond the examination mid-point** – Examination teams are not required to issue the Mandatory IDR. However, the IMT recommends its issuance if “substantial examination activity” has not been performed on the RC Claim. The Research Credit Technical Advisors can provide guidance.

Note: The Mandatory IDR is located in [Exhibit C - Research Credit Claim Audit Technique Guide RCCATG](#) on IRS.gov website. Upon receipt of a taxpayer's response to the Mandatory IDR, the field is responsible for consulting with a Technical Advisor to determine the appropriate next steps for the examination. ([Technical Advisor Contact Information](#))

Centralized Filing of Research Credit Claims

Effective March 12, 2008, Notice 2008-39 mandates that taxpayers who are required to file Form 1120, U.S. Corporation Income Tax Return, must file RC Claims for credit or refund with the Ogden Service Center, unless the RC Claim is subject to electronic filing requirements for amended returns as stated in Treas. Reg. § 301.6011-5. The claim for credit or refund shall indicate at the top “Refund-Research Credit” and include a copy of the Form 6765, Credit for Increasing Research Activities (if any) filed with the original return and an amended Form 6765.

The Notice 2008-39 does not allow Team Managers to accept RC Claims. Team Managers must inform taxpayers to file their RC Claims with the Ogden Service Center. Notice 2008-39 supersedes Notice 2002-44. Notice 2002-44 previously allowed claims for credit or refund to be filed with LMSB or SBSE Team Manager. See [Notice 2008-39 Credit for Increasing Research Activities: Filing Address and Requirements for Certain Claims for Credit for Refund](#).

Assertion of Penalty under I.R.C. §6676, “Erroneous Claim for Refund or Credit”

The I.R.C. §6676 penalty for filing erroneous claims for refund or credit is applicable to claims filed after May 25, 2007. The penalty is equal to twenty percent (20%) of the disallowed portion of the claim for refund or credit for which there is no reasonable basis for the claimed tax treatment. The SBSE Penalty Administration website contains procedural guidance on the penalty ([Servicewide Penalty Program](#)).

The I.R.C. §6676 penalty must be addressed in all cases where the RC Claim for refund or credit is disallowed in part or in full. To ensure consistent treatment of the I.R.C. §6676 penalty application for RC Claims, teams must obtain and document the concurrence from a Technical Advisor where the RC Claim is fully or partially disallowed and the I.R.C. §6676 penalty is not asserted.

Project Code and Tracking Code

1. On ERCS, Project Code 0551 and/or Tracking Code 0551 is required.
2. On IMS Version 3.0, input on the Issue Detail Screen SAIN Code 605-Research Credit, UIL Code 41.00-41.56 as appropriate and select IMS Issue Tracking Attribute Code C160 Research & Experimentation (R&E) Credit Claims (I.R.C. §41) from the drop down menu.

Un-agreed Research Credit Claims cases

When closing un-agreed RC Claim cases to Appeals and the disallowance is due to non-compliance with the requirements under Treas. Reg. § 1.41-4(d) – “a taxpayer claiming a credit under I.R.C. §41 must retain records in sufficiently usable form and detail to substantiate that the expenditures claimed are eligible for the credit” – examination teams must:

1. Set forth in the Report Transmittal Letter, Form 4665, the following language: “RESEARCH CREDIT CLAIM FOR REFUND – SUBSTANTIATION CASE”, and
2. Notify the Technical Advisor of the un-agreed case closing to Appeals.
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