

Current Status of Issue

- * A second Industry Director Directive (IDD) was issued 1-15-2009.
- * An ATG for Research Claims was issued (May 2008).
- * Notice 2002-44 was superseded by Notice 2008-39, which was published in the IRB in March 2008. Under Notice 2008-39, refund claims involving the research credit must generally be filed at a central address in Ogden, UT. The notice eliminates an elective approach allowed under Notice 2002-44 that let taxpayers under audit submit certain research credit claims directly through LB&I audit teams (i.e. informal claims).
- * Mandatory RC Claim IDR for Tier I identified cases implemented.
- * Enactment of Erroneous Claim Penalty under Section 6676. (May 2007)
- * Issuance of draft Appeals “white paper” on substantiating research credit claims. (Feb 2007)
- * Consider application of IRC section 6676 penalty per the Industry Director Directive #2.

Executing IMT Strategy for Tier I Issues

Audit Teams Should:

- Review all applicable reference material for the issue on the Tier I website and Research Credit TA website.
- Establish the Tier I Issue on IMS using the UIL & SAIN codes per the ID Directive.
- Contact a Research Credit Technical Advisor early for consultation regarding issue handling procedures.
- Consider the issue in the audit planning and risk assessment in accordance with the IMT strategy.
- Utilize the audit tools including the mandatory IDR and techniques provided by the IMT to develop the issue.
- Resolve the issue using all resolution tools in alignment with the IMT strategy.

Issue Management Team (IMT)

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Tier 1



Tier I Research Credit Claims

Quick Reference Guide

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Issue Owner Executive (IOE)

Lavena Williams, DFO

**Communications, Technology
& Media**

Tier I: Research Credit Claims

Formal and informal Research Claims are filed using high-level estimates, invalid assumptions, lack of nexus between qualified research expenses (QREs) and the business component without contemporaneous documentation to support the claim. Major accounting firms and professional boutique firms market research credit studies as a tax product, and in many instances are preparing these claims on a contingency fee basis. Thus, a taxpayer faces limited risk when claims are prepared under a contingency fee agreement. Audit teams expend enormous resources perfecting these claims and generally disallowing a large portion of the claim.

Administrative Codes

UIL Codes and IMS input:

There are numerous UIL codes for research issues ranging from 41.00-00 to 41.56.00. Examiners should select a '41 series' code related to the most significant issue on the Research Credit Claim.

SAIN Code: 605-Research Credit

Tracking and Project Code: 0551

ITA Code: C160

Issue Specialization Teams

There is no IST currently for this issue.

Industry Director Directives (IDDs)

- * Industry Director's Directive issued on 4/4/07 announcing the designation of the research credit claims issue as a LB&I Tier I issue:
<http://www.irs.gov/businesses/article/0,,id=169273,00.html>
- * Industry Director's Directive issued on January 15, 2009 providing guidance on the issue:
<http://www.irs.gov/businesses/corporations/article/0,,id=202712,00.html>

Mandatory IDRs

The mandatory IDR should be the first IDR issued at the beginning of the examination. After taxpayer's responses to the IDR questions are secured the agent should forward a copy of the response to a RC Technical Advisor and request consultation. The RCTA will assist the examiner in determining whether or not to proceed with the examination, and assess the likelihood of whether the taxpayer's RC study can sufficiently support the credit claimed. The goal is not to expend audit resources reconstructing taxpayer claims, but to audit only claims that can be properly substantiated. This IDR will enable the determination. If the claim is not adequately supported, a Notice of Claim Disallowance may be warranted.

Mandatory Research Credit Claims IDR:

<http://www.irs.gov/businesses/article/0,,id=188198,00.html>

Appeals Settlement Guidelines (ASGs)

Currently there are no ASGs for this Tier I issue.

Administrative & Technical Guidance

Notice 2008-39 offers a central filing process for all corporate claims arising under IRC 41.

<http://www.irs.gov/pub/irs-drop/n-08-39.pdf>

Research Credit Claims-Audit Techniques Guide (RCCATG) (May 2008):

<http://www.irs.gov/businesses/article/0,,id=183208,00.html>

IRC 6676- Erroneous claim for refund or credit: This penalty provision is effective for claims filed after May 25, 2007. Contact a RC Technical Advisor for procedural guidance on penalty assertion. Treasury Regulations for this provision are pending (guidance will include defining "reasonable basis" standard).

Research Credit Claim Checklist: Audit tool to use when examining a research credit claim to ensure consideration was given to all procedural issues

<http://www.irs.gov/businesses/article/0,,id=183230,00.html>

General Research Credit-Reference Material:

Includes General Research Credit Audit Techniques Guide (ATG2), general IDR question listing, and base computation workbook among other things.

<http://www.irs.gov/businesses/article/0,,id=153347,00.html>