



November 18, 2021

Ms. Nikole Flax
Commissioner
Large Business & International Division
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Ms. Holly Paz
Deputy Commissioner
Large Business & International Division
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Internal Revenue Code Section 41 Research Credit Refund Claims

Dear Ms. Flax and Ms. Paz:

The American Institute of CPAs (AICPA) provides comments and concerns related to the significant change in requirements for a valid refund claim for research credits as announced in IR-2021-2023¹ (IRS News Release) and the accompanying Field Attorney Advice memorandum (FAA) that was issued on October 15, 2021². The AICPA requests that the IRS delay the implementation of the new requirements to provide taxpayers with a meaningful opportunity to comment before the new requirements take effect.

Overview:

The IRS News Release and accompanying FAA sets forth the information that taxpayers will be required to provide in a statement at the time of filing the refund claim for the refund claim to be valid. The required statement must:

- Identify all the business components to which the section 41³ research credit claim related for that year.
 - For each business component:
 - Identify all research activities performed;
 - Identify all individuals who performed each research activity; and
 - Identify all the information each individual sought to discover.
- Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year (this may be done using Form 6765, *Credit for Increasing Research Activities*).

¹ The IRS issued a news release and field attorney advice, "[IRS sets forth required information for a valid research credit claim for refund | Internal Revenue Service](#)," October 15, 2021.

² [FAA 20214101F](#) (October 15th release of September 17th field attorney advice).

³ All references to "section" are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

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The IRS will provide a grace period until January 10, 2022 before requiring the inclusion of this information with research credit claims for refund.

The new documentation requirements as outlined in the news release and FAA represent a significant change in the general requirements for a refund claim that are found in Treas. Reg. § 301.6402-2, which provides, in part:

(b) Grounds set forth in claim. (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit. (Treas. Reg. § 301.6402-2(b)(1)).

The requirement in Treas. Reg. § 301.6402-2(b)(1) to provide sufficient information regarding the grounds and facts upon which the claim is based is known as the “specificity requirement.”

Recommendation:

The AICPA recommends that the IRS delay implementation of the new requirements to allow adequate time for the public to comment and to allow the IRS an appropriate amount of time to consider those comments and make changes in response to those comments.

Analysis:

The new requirements outlined in the FAA represent a significant interpretation of the regulations and how a taxpayer filing a research credit claim for refund satisfies the specificity requirement in Treas. Reg. § 301.6402-2(b)(1). As such, they are a major departure from the current regulations and raise significant questions. Some of these questions include, but are not limited to:

- Are the new requirements limited to research credit to refund claims filed on amended returns?
- Will taxpayers receive notification if the IRS receives a research credit refund claim that it believes is deficient?
- How can taxpayers challenge an IRS determination that a research credit refund claim is deficient?
- Will the new requirements apply to research credit refund claims filed before the January 10, 2022 grace period expiration date?

The IRS has provided a grace period until January 10, 2022 for research credit claims to comply with the new requirements. However, the significance of these changes warrants the input of taxpayers prior to the IRS implementing the new requirements. An implementation date of January 10, 2022 is too soon for taxpayers to be able to provide meaningful comments and the IRS to seriously consider and make changes in response to those comments. Delaying the implementation of the new requirements will provide taxpayers with a meaningful opportunity to comment before the new requirements take effect.

The AICPA is the world's largest member association representing the accounting profession, with more than 428,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We welcome the opportunity to discuss these comments on the reconciliation legislation or to answer any questions that you may have. If you have any questions, please feel free to contact Melanie Lauridsen, Senior Manager – AICPA Tax Policy & Advocacy at (202) 434-9235, or Melanie.Lauridsen@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Lewis". The signature is fluid and cursive, written in a professional style.

Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

- cc: Mr. Tom West, Deputy Assistant Secretary for Domestic Business Tax, Office of Tax Policy, Department of the Treasury
Mr. Krishna Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
Ms. Wendy Friese, Tax Policy Advisor, Office of Tax Legislative Counsel, Department of the Treasury
Mr. Timothy Powell, Tax Policy Advisor, Office of Tax Legislative Counsel, Department of the Treasury
Mr. John Moriarty, Associate Chief Counsel, Income Tax & Accounting, Internal Revenue Service
Ms. Julie Hanlon-Bolton, Income Tax & Accounting, Internal Revenue Service
Ms. Kate Abdoo, Income Tax & Accounting, Internal Revenue Service