

AN ALERT FROM THE BDO R&D TAX PRACTICE

BDO KNOWS:

R&D TAX CREDITS



► SUBJECT

NEW TAXPAYER-FRIENDLY REGULATIONS ALLOW ALTERNATIVE SIMPLIFIED RESEARCH CREDIT TO BE ELECTED ON AMENDED RETURNS

► INTRODUCTION

On June 2, the United States Treasury Department and the Service issued final and temporary regulations that allow certain taxpayers to elect the section 41 alternative simplified credit (“ASC”) on amended returns. T.D. 9666. Previously, taxpayers could elect the ASC for a taxable year only on that year’s original, timely-filed return. The final regulations eliminate this restriction; the temporary regulations provide that, generally, taxpayers may elect the ASC on amended returns.

Two exceptions are provided. First, a taxpayer may not have previously claimed the section 41 credit on its original return or an amended return for that taxable year; and second, a taxpayer that is a member of a controlled group may not make an ASC election on an amended return if any member of the controlled group for that year previously reported the research credit using a method other than the ASC on an original or amended return. Although the temporary regulations expire June 2, 2017, the text of the regulations has also been issued as a separate set of proposed regulations. After a comment period has passed and a public hearing (if requested) is held, the proposed regulations are likely to be issued as final regulations, with such modifications as may be appropriate after consideration of the comments received.

► BACKGROUND

The ASC was introduced initially through temporary regulations and was available to taxpayers for taxable years ending after December 31, 2006. As its name implies, the alternative simplified credit provides a simpler method for

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calculating the research credit than the methods used for calculating the regular credit. More specifically, the ASC provides a simpler method for calculating the research credit's "base amount."

A taxpayer's research credit equals a percentage only of the amount by which current-year qualified spending exceeds the base amount. If a taxpayer's current-year spending doesn't exceed the base amount for that year, it won't have a credit for that year.

The ASC's base amount is calculated with reference only to the prior three taxable years' qualified spending. In contrast, the regular credit's base amount is calculated using qualified spending and gross receipts information for taxable years that, for many taxpayers, go back to the 1980s. The ASC, therefore, is not only simpler to calculate than the regular credit; it is also generally easier to support on an examination of the taxpayer's returns.

In 2011, Treasury and the Service published final regulations clarifying that the ASC could be elected only on original, timely-filed returns. T.D. 9528 (June 10, 2011). In response, many taxpayers petitioned the Service to amend the regulations and allow ASC elections on amended returns, citing the need for extra time to determine which credit, the regular credit or the ASC, was more beneficial.

The new regulations provide a significant opportunity for many businesses, and taxpayers should review their credit calculations to determine if they can benefit from them.

For more information, or to talk about your particular situation, please contact one of our R&D specialists.

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