

## Tax Notes

# IRS Issues New Tougher Requirements for Federal Research Credit Refund Claims

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The IRS continually includes the Federal Research Credit in the “[Dirty Dozen](#)” annual list of scams and other abusive arrangements. In part, to more efficiently manage resources and quite possibly to combat abuses, last month the IRS released guidance setting forth new requirements for claiming a Federal Research Credit refund or credit for prior tax years. The guidance, in the form of an [Office of the Chief Counsel Memorandum](#), addresses, among other things, two questions:

1. What information is needed to submit a research credit claim for refund?
2. What format must the taxpayer use when submitting such information?

The IRS responses to those questions and the key information contained in the Memorandum are presented in this edition of *Tax Notes*.

### Research Credit Refund Claim Requirements

In order to file a refund claim related to prior tax years, the submission cannot merely include a credit form (Form 6765), but must also provide grounds for the claim and facts that are sufficient to support it.

Specifically, the Memorandum denotes that for a refund claim, the minimum requirements are:

- Identification of all business components to which the credit applies;
- For each 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 total qualified wage expenses, supply expenses and third party contract research expenses.

### Format Requirements

The Memorandum specifically states that amended returns (Forms 1120X and 1040X) must have a written statement (signed under penalties of perjury) identifying the grounds and specific facts supporting the research credit claim. Solely producing documents is not sufficient. If a document, including a credit study, is provided to support the claim, the taxpayer must specify the exact page that supports each specific fact.

### Key Timeframes

- From now until January 10, 2022, there is a grace period before which the new requirements in the Memorandum go into effect.
- January 11, 2022 through January 11, 2023 is the transition period during which if a filed refund claim is deficient, the IRS will allow a 30-day cure period before a final IRS determination is issued.
- Beginning on January 12, 2023, the IRS will no longer allow a cure period.

## Observations

The Memorandum recommends to examiners that after the one-year transition period, they should reject a deficient claim before an audit is initiated. A taxpayer will be precluded from curing its refund claim if procedural requirements were not met and the statute of limitations (SOL) then expires. As a result, it is suggested that for refund claims to be filed near a SOL expiration date, the claim should be thoroughly reviewed to avoid a summary rejection.

Furthermore, although the Memorandum addresses refund claims, it is recommended that taxpayers apply the same standards when claiming a research credit on an original return. The documentation, however, need not be submitted with the return.

## Contact Us

If you have any questions or need assistance regarding the Federal Research credit or state tax credits generally, contact:

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