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Reg §1.41-6 Aggregation of expenditures.

## Federal Regulations

### Reg § 1.41-6. Aggregation of expenditures.

**Caution:** The Treasury has not yet amended Reg § 1.41-6 to reflect changes made by P.L. 110-343, P.L. 110-172, P.L. 109-432



**Effective:** April 2, 2018. For dates of applicability, see §§1.41-6(j), 1.45G-1(g), and 1.280C-4(c).

#### **(a) Controlled group of corporations; trades or businesses under common control.**

(1) *In general.* To determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must-

- (i) Compute the group credit in the manner described in paragraph (b) of this section; and
- (ii) Allocate the group credit among the members of the group in the manner described in paragraph (c) of this section.

(2) *Consolidated groups.* For special rules relating to consolidated groups, see paragraph (d) of this section.

(3) *Definitions.* For purposes of this section-

- (i) Consolidated group has the meaning set forth in §1.1502-1(h).
- (ii) Controlled group and group mean a controlled group of corporations, as defined in section 41(f)(5), or a group of trades or businesses under common control. For rules for determining whether trades or businesses are under common control, see §1.52-1 (b) through (g).

(iii) Credit year means the taxable year for which the member is computing the credit.

(iv) Group credit means the research credit (if any) allowable to a controlled group.

(v) Trade or business means a sole proprietorship, a partnership, a trust, an estate, or a corporation that is carrying on a trade or business (within the meaning of section 162). Any corporation that is a member of a commonly controlled group shall be deemed to be carrying on a trade or business if any other member of that group is carrying on any trade or business.

**(b) Computation of the group credit.**

*(1) In general.* All members of a controlled group are treated as a single taxpayer for purposes of computing the research credit. The group credit is computed by applying all of the section 41 computational rules on an aggregate basis. All members of a controlled group must use the same method of computation: The method described in section 41(a)(1), the alternative incremental credit (AIRC) method described in section 41(c)(4) (available for years beginning on or before December 31, 2008), or the alternative simplified credit (ASC) method described in section 41(c)(5), in computing the group credit for a credit year.

*(2) Start-up companies.*

(i) In general. For purposes of computing the group credit, a controlled group is treated as a start-up company for purposes of section 41(c)(3)(B)(i) if-

(A) There was no taxable year beginning before January 1, 1984, in which a member of the group had gross receipts and either the same member or another member also had qualified research expenditures (QREs); or

(B) There were fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which a member of the group had gross receipts and either the same member or another member also had QREs.

(ii) Example. The following example illustrates the principles of paragraph (b)(2)(i) of this section:

*Example.* A, B, and C, all of which are calendar year taxpayers, are members of a controlled group. During the 1983 taxable year, A had QREs, but no gross receipts; B had gross receipts, but no QREs; and C had no QREs or gross receipts. The 1984 taxable year was the first taxable year for which each of A, B, and C had both QREs and gross receipts. A, B, and C had both QREs and gross

receipts in 1985, 1986, 1987, and 1988. Because the first taxable year for which each of A, B, and C had both QREs and gross receipts began after December 31, 1983, each of A, B, and C is a start-up company under section 41(c)(3)(B)(i) and each is a start-up company for purposes of computing the stand-alone entity credit. During the 1983 taxable year, at least one member of the group, A, had QREs and at least one member of the group, B, had gross receipts, thus, the group had both QREs and gross receipts in 1983. Therefore, the controlled group is not a start-up company because the first taxable year for which the group had both QREs and gross receipts did not begin after December 31, 1983, and there were not fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which a member of the group had gross receipts and QREs.

(iii) First taxable year after December 31, 1993, for which the controlled group had QREs. In the case of a controlled group that is treated as a start-up company under section 41(c)(3)(B)(i) and paragraph (b)(2)(i) of this section, for purposes of determining the group's fixed-base percentage under section 41(c)(3)(B)(ii), the first taxable year after December 31, 1993, for which the group has QREs is the first taxable year in which at least one member of the group has QREs.

(iv) Example. The following example illustrates the principles of paragraph (b)(2)(iii) of this section:

*Example.* D, E, and F, all of which are calendar year taxpayers, are members of a controlled group. The group is treated as a start-up company under section 41(c)(3)(B)(i) and paragraph (b)(2)(i) of this section. The first taxable year after December 31, 1993, for which D had QREs was 1994. The first taxable year after December 31, 1993, for which E had QREs was 1995. The first taxable year after December 31, 1993, for which F had QREs was 1996. Because the 1994 taxable year was the first taxable year after December 31, 1993, for which at least one member of the group, D, had QREs, for purposes of determining the group's fixed-based percentage under section 41(c)(3)(B)(ii), the 1994 taxable year was the first taxable year after December 31, 1993, for which the group had QREs.

**(c) Allocation of the group credit.** The group credit is allocated to each member of the controlled group on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums taken into account for the taxable year by such controlled group for purposes of the credit. For purposes of paragraphs (c), (d), and (e) of this section, qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums are collectively referred to as QREs.

**(d) Special rules for consolidated groups.**

(1) *In general.* For purposes of applying paragraph (c) of this section, members of a consolidated group who are members of a controlled group are treated as a single member of the controlled group.

(2) *Start-up company status.* A consolidated group's status as a start-up company and the first taxable year after December 31, 1993, for which a consolidated group has QREs are determined in accordance with the principles of paragraph (b)(2) of this section.

(3) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to each member of the consolidated group on a proportionate basis to its share of the aggregate of the QREs taken into account for the taxable year by such consolidated group for purposes of the credit.

**(e) Examples.** The following examples illustrate the provisions of paragraphs (c) and (d) of this section.

*Example (1).* Controlled group. A, B, and C are a controlled group. A had \$100x, B \$300x, and C \$500x of qualified research expenses for the year, totaling \$900x for the group. A, in the course of its trade or business, also made a payment of \$100x to an energy research consortium for energy research. The group's QREs total 1000x and the group calculated its total research credit to be \$60x for the year. Based on each member's proportionate share of the controlled group's aggregate QREs, A is allocated \$12x, B \$18x, and C \$30x of the credit.

*Example (2).* Consolidated group is a member of controlled group. The controlled group's members are D, E, F, G, and H. F, G, and H file a consolidated return and are treated as a single member (FGH) of the controlled group. D had \$240x, E \$360x, and FGH \$600x of qualified research expenses for the year (\$1,200x aggregate). The group calculated its research credit to be \$100x for the year. Based on the proportion of each member's share of QREs to the controlled group's aggregate QREs for the taxable year D is allocated \$20x, E \$30x, and FGH \$50x of the credit. The \$50x of credit allocated to FGH is then allocated to the consolidated group members based on the proportion of each consolidated group member's share of QREs to the consolidated group's aggregate QREs. F had \$120x, G \$240x, and H \$240x of QREs for the year. Therefore, F is allocated \$10x, G is allocated \$20x, and H is allocated \$20x.

**(f) For taxable years beginning before January 1, 1990.** For taxable years beginning before January 1, 1990, see §1.41-6 as contained in 26 CFR part 1, revised April 1, 2005.

**(g) Tax accounting periods used.**

(1) *In general.* The credit allowable to a member of a controlled group is that member's share of the group credit computed as of the end of that member's taxable year. In computing the group credit for a group whose members have different taxable years, a member generally should treat the taxable year of another member that ends with or within the credit year of the computing member as the credit year of that other member. For example, Q, R, and S are members of a controlled group of corporations.

Both Q and R are calendar year taxpayers. S files a return using a fiscal year ending June 30. For purposes of computing the group credit at the end of Q's and R's taxable year on December 31, S's fiscal year ending June 30, which ends within Q's and R's taxable year, is treated as S's credit year.

*(2) Special rule when timing of research is manipulated.* If the timing of research by members using different tax accounting periods is manipulated to generate a credit in excess of the amount that would be allowable if all members of the group used the same tax accounting period, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return may require each member of the group to calculate the credit in the current taxable year and all future years as if all members of the group had the same taxable year and base period as the computing member.

**(h) Membership during taxable year in more than one group.** A trade or business may be a member of only one group for a taxable year. If, without application of this paragraph, a business would be a member of more than one group at the end of its taxable year, the business shall be treated as a member of the group in which it was included for its preceding taxable year. If the business was not included for its preceding taxable year in any group in which it could be included as of the end of its taxable year, the business shall designate in its timely filed (including extensions) return the group in which it is being included. If the return for a taxable year is due before July 1, 1983, the business may designate its group membership through an amended return for that year filed on or before June 30, 1983. If the business does not so designate, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return will determine the group in which the business is to be included.

**(i) Intra-group transactions.**

*(1) In general.* Because all members of a group under common control are treated as a single taxpayer for purposes of determining the research credit, transfers between members of the group are generally disregarded.

*(2) In-house research expenses.* If one member of a group performs qualified research on behalf of another member, the member performing the research shall include in its QREs any in-house research expenses for that work and shall not treat any amount received or accrued as funding the research. Conversely, the member for whom the research is performed shall not treat any part of any amount paid or incurred as a contract research expense. For purposes of determining whether the in-house research for that work is qualified research, the member performing the research shall be treated as carrying on any trade or business carried on by the member on whose behalf the research is performed.

(3) *Contract research expenses.* If a member of a group pays or incurs contract research expenses to a person outside the group in carrying on the member's trade or business, that member shall include those expenses as QREs. However, if the expenses are not paid or incurred in carrying on any trade or business of that member, those expenses may be taken into account as contract research expenses by another member of the group provided that the other member-

(i) Reimburses the member paying or incurring the expenses; and

(ii) Carries on a trade or business to which the research relates.

(4) *Lease Payments.* The amount paid or incurred to another member of the group for the lease of personal property owned by a member of the group is not taken into account for purposes of section 41. Amounts paid or incurred to another member of the group for the lease of personal property owned by a person outside the group shall be taken into account as in-house research expenses for purposes of section 41 only to the extent of the lesser of-

(i) The amount paid or incurred to the other member; or

(ii) The amount of the lease expenses paid to the person outside the group.

(5) *Payment for supplies.* Amounts paid or incurred to another member of the group for supplies shall be taken into account as in-house research expenses for purposes of section 41 only to the extent of the lesser of-

(i) The amount paid or incurred to the other member; or

(ii) The amount of the other member's basis in the supplies.

**(j) Effective/applicability dates.**

(1) *In general.* Except for paragraph (d) of this section, these regulations are applicable for taxable years ending on or after May 24, 2005. Generally, a taxpayer may use any reasonable method of computing and allocating the credit (including use of the consolidated group rule contained in paragraph (d) of this section) for taxable years ending before May 24, 2005. However, paragraph (b) of this section, relating to the computation of the group credit, and paragraph (c) of this section, relating to the allocation of the group credit, (applied without regard to paragraph (d) of this section) will apply to taxable years ending on or after December 29, 1999, if the members of a controlled

group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b) of this section. In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group shall be deemed to have, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b) of this section.

*(2) Consolidated group rule.* Paragraph (d) of this section is applicable for taxable years ending on or after November 9, 2006. For taxable years ending on or after May 24, 2005, and before November 9, 2006, see §1.41-6T(d) as contained in 26 CFR part 1, revised April 1, 2006.

*(3) Taxable years ending after June 9, 2011.* Paragraphs (b)(1), (c)(2), and (e) of this section are applicable for taxable years ending after June 9, 2011. For taxable years ending on or before June 9, 2011, see §§1.41-6T and 1.41-6 as contained in 26 CFR part 1, revised April 1, 2011.

*(4) Taxable years beginning after December 31, 2011.* Paragraphs (c), (d)(1) and (3), (e), and (j)(4) and (5) of this section apply to taxable years beginning on or after April 2, 2018. For taxable years ending before April 2, 2018, see §1.41-6T as contained in 26 CFR part 1, as revised April 1, 2017.

*(5) Taxable years beginning before January 1, 2012.* See §1.41-6 as contained in 26 CFR part 1, revised April 1, 2014. For further guidance, see §1.41-6T(j)(4).

T.D. 9296, 11/8/2006 , amend T.D. 9401, 6/13/2008 , T.D. 9528, 6/9/2011 , T.D. 9717, 4/2/2015 , T.D. 9832, 3/27/2018 .