

Part III - Administrative, Procedural, and Miscellaneous

Research Credit-Suspension Period

Notice 2001-2

PURPOSE

This notice provides guidance to help taxpayers compute and report their credit for increasing research activities (research credit) under § 41 of the Internal Revenue Code for taxable years that include the research credit suspension periods described in § 502 (d)(2) of the Tax Relief Extension Act of 1999, Pub. L. No. 106-170 (Dec. 17, 1999) (the Act). Further, this notice explains how to take into account any research credits attributable to a research credit suspension period.

SPECIAL RULES RELATING TO THE RESEARCH CREDIT SUSPENSION PERIODS

Section 502(d) of the Act provides that, for purposes of the Code, any research credit attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, that is otherwise allowable under the Code, may not be taken into account prior to October 1, 2000. Further, any research credit attributable to the period beginning on October 1, 2000, and ending on September 30, 2001, that is otherwise allowable under the Code, may not be taken into account prior to October 1, 2001.

On or after the earliest date that an amount of research credit attributable to a research credit suspension period may be taken into account, the amount may be taken into account through the filing of an amended return, an application for expedited refund, or an adjustment of estimated taxes.

Because the research credit suspension periods merely delay the use of research credits attributable to a research credit suspension period, the limitations contained in § 38(c), § 39, and § 41(g) on the amount of research credit allowable to any person as a credit against tax for any taxable year remain applicable. Further, taxpayers not electing to take a reduced credit under § 280C(c)(3) must continue to reduce applicable deductions, amounts chargeable to capital account, and credits for the taxable year by the full amount of the research credit as required by § 280C(c)(1) and (2).

COMPUTATION OF THE RESEARCH CREDIT FOR TAXABLE YEARS INCLUDING SUSPENSION PERIODS

Section 502(d)(4) of the Act provides the rule for determining the amount of research credit suspended for taxable years including research credit suspension periods. To determine the amount of research credit that is suspended, taxpayers first must calculate the research credit for the taxable year. The amount of research credit that is attributable to a research credit suspension period under § 502(d) of the Act is the amount that bears the same ratio to the amount of research credit for the taxable year as the number of months in the research credit suspension period that are during the taxable year bears to the total number of months in the taxable year.

Form 6765, Credit for Increasing Research Activities, reflects the required computation of the research credit and the determination of the research credit allowed on a current year return and the suspended research credit attributable to the current year.

APPLICATION

ORIGINAL RETURNS

Research credits attributable to a research credit suspension period may not be used as a credit against tax on a timely filed or late filed original return for a taxable year that includes any part of such suspension period even if that original return is filed after the expiration of such suspension period. This rule is necessary for the Internal Revenue Service to properly administer § 502(d) of the Act.

CARRYBACK AND CARRYFORWARD OF SUSPENDED CREDITS

Any research credit that is not allowed for the taxable year that is attributable to a research credit suspension period may not be claimed as a carryback or carryforward until the day after the end of the applicable research credit suspension period. After the end of the applicable research credit suspension period, however, research credits attributable to a research credit suspension period that are not used currently as a credit against tax may be carried to other taxable years under the rules of § 39.

OVERPAYMENT OF TAX AND INTEREST ON OVERPAYMENTS

Because research credits attributable to a research credit suspension period may not be taken into account in determining any amount required to be paid for any purpose under the Code until the expiration of the applicable research credit suspension period, research credits attributable to a research credit suspension period are not available as a credit against tax until the expiration of the applicable research credit suspension period and may not be considered in determining any overpayment of tax until the expiration of the applicable research credit suspension period.

In computing interest on any overpayment attributable to any suspended research credit under the rules of § 6611, the date of the overpayment for purposes of

computing the interest is the later of the date of the overpayment without regard to the research credit suspension period (even though the credit may not be claimed on an original return that includes any part of the suspension period) or the day after the close of the suspension period.

REFUND OF TAX AND EXPEDITED REFUNDS

If an overpayment of tax for a taxable year arises as of the expiration of a research credit suspension period, a claim for refund of the overpayment of tax may be taken into account by filing an amended return, an application for tentative refund, or an application for expedited refund on or after the earliest date that an amount of credit may be taken into account. A separate claim should be made for each taxable period.

An application for expedited refund of suspended research credits is made by filing a Form 1045, Application for Tentative Refund, or a Form 1139, Corporation Application for Tentative Refund, or by filing an amended income tax return (Form 1040X, Form 1120X, or other amended return) before the date that is the later of one year after the close of the research credit suspension period to which the application relates or one year after the close of the taxable year to which the suspended research credit relates. The application for expedited refund shall be filed with the Service Center receiving the original return. The application for expedited refund shall indicate at the top “**Application for Expedited Refund-Suspended Research Credit**” and include a copy of the Form 6765 filed with the original return.

If an application for an expedited refund is filed before the date that is the later of one year after the close of the research credit suspension period to which the application relates or one year after the close of the taxable year to which the

suspended research credit relates, the Internal Revenue Service will review the application, determine the amount of the overpayment, and apply, credit, or refund the overpayment, in a manner similar to the manner provided in § 6411(b), no later than 90 days after the date on which an application is filed.

Further, a claim for refund of the overpayment of tax attributable to suspended research credits may be taken into account by filing an amended income tax return (Form 1040X, Form 1120X, or other amended return) on or after the date that is the later of one year after the close of the research credit suspension period to which the claim relates or one year after the close of the taxable year to which the suspended research credit relates but before the expiration of the period of limitation on filing a claim for credit or refund under § 6511. An amended income tax return, filed on or after the date that is the later of one year after the close of the research credit suspension period to which the claim relates or one year after the close of the taxable year to which the suspended research credit relates, claiming a refund of the overpayment of tax attributable to suspended research credits shall indicate at the top **“Refund-Suspended Research Credit”** and include a copy of the Form 6765 filed with the original return. Further, an amended income tax return filed on or after the date that is the later of one year after the close of the research credit suspension period to which the claim relates or one year after the close of the taxable year to which the suspended research credit relates and before the expiration of the period of limitation on filing a claim for credit or refund under § 6511 will be processed under the general rules for processing refund claims in lieu of the expedited refund procedures described above.

Finally, any claim for refund of an overpayment of tax attributable to a research credit suspension period should not be filed before the expiration of the applicable suspension period or before the date the original return for the applicable taxable year is filed.

ESTIMATED TAXES

The prohibition on taking into account research credits attributable to a research credit suspension period extends to the determination of any estimated tax payment. Thus, for example, the research credit attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, cannot be used to reduce any estimated tax payments due before October 1, 2000. The research credit attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, can be used to reduce an estimated tax payment due on or after October 1, 2000.

ESTIMATED TAX PENALTIES

In general, additions to tax for failure to pay estimated tax are made under § 6654 or § 6655 for any underpayment of income tax imposed by the Code even if the underpayment was created or increased by reason of the suspension of the research credit under § 502 of the Act. No additions to tax for failure to pay estimated tax, however, will be made for any period before July 1, 1999, for any underpayment of income tax imposed by the Code to the extent the underpayment was created or increased by reason of the suspension of the research credit under § 502 of the Act.

EXAMPLE

Assume that taxpayer, a calendar-year corporation, had 800x dollars of research credit for 1999 and 800x dollars of research credit for 2000. The amount of research

credit attributable to the period July 1 through December 31, 1999, is 400x dollars (6/12 x 800x dollars), and the amount of research credit attributable to the period from January 1 through September 30, 2000 would be 600x dollars (9/12 x 800x dollars).

On taxpayer's original return for 1999, taxpayer may not reduce its 1999 tax liability by the research credit of 400x dollars attributable to the period July 1 through December 31, 1999. On or after October 1, 2000, taxpayer may file an amended return to claim the benefit of the 400x dollars of research credit attributable to the period July 1 through December 31, 1999. In lieu of filing an amended return, on or after October 1, 2000, taxpayer may file an application for tentative refund of the 400x dollars of research credit attributable to the period July 1 through December 31, 1999. An application for tentative refund of the 400x dollars of research credit attributable to the period July 1 through December 31, 1999, must be filed before October 1, 2001. An amended return or application for tentative refund filed before October 1, 2001, claiming the 400x dollars of research credit attributable to the period July 1 through December 31, 1999, with the designation "**Application for Expedited Refund-Suspended Research Credit**" will be treated as an application for expedited refund. Taxpayer's 40

not be taken into account in determining any of the estimated tax payments that are due before October 1, 2000. If taxpayer makes an estimated tax payment for its 2000 taxes based on its prior year tax liability, that liability must be determined without regard to the 400x dollars of research credit attributable to the period July 1 through December 31, 1999. If taxpayer makes an estimated tax payment for its 2000 taxes based on its current year tax liability, whether or not that liability is annualized, that liability must be determined without regard to the 600x dollars of research credit attributable to the

period January 1 through September 30, 2000, or any research credit attributable to the second research credit suspension period.

Because taxpayer's first estimated tax payment due on or after October 1, 2000, is the payment due on December 15, 2000, taxpayer may use its 600x dollars of research credit attributable to the period January 1 through September 30, 2000, and available on October 1, 2000, to reduce the amount of estimated tax payments otherwise required to be paid on December 15, 2000. In addition, if taxpayer indicates on its amended return filed on or after October 1, 2000, that all or part of the 400x dollars of research credit attributable to the period July 1 through December 31, 1999, and available on October 1, 2000, is to be applied to its estimated tax for the succeeding taxable year (in lieu of a refund), then the amount requested will be applied to the taxpayer's estimated tax payment due on December 15, 2000.

Alternatively, assume taxpayer files an amended return on December 1, 2000 to claim a refund of the 400x dollar overpayment of tax attributable to the period July 1 through December 31, 1999. Taxpayer is entitled to interest under § 6611 on the overpayment from October 1, 2000 (the end of the applicable suspension period) to December 1, 2000 (the date the amended return was filed). Assuming that the overpayment is refunded within 45 days after the amended return is filed, no additional interest is allowed on the refund.

DRAFTING INFORMATION

The principal author of this notice is Lisa J. Shuman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Shuman at (202) 622-3120 (not a toll-free call).

