

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9712]

RIN 1545-BL78

Alternative Simplified Credit Election

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations

SUMMARY: This document contains final regulations relating to the election of the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code (Code).

The final regulations affect certain taxpayers claiming the credit under section 41.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §1.41-9(d).

FOR FURTHER INFORMATION CONTACT: David Selig (202) 317-4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide rules relating to the time and manner of electing the alternative simplified credit (ASC) under section 41(c)(5) of the Internal Revenue Code (Code).

Section 41(a) provides an incremental tax credit for increasing research activities (research credit) based on a percentage of a taxpayer's qualified research expenses above a base amount. A taxpayer can apply the rules and credit rate percentages under section 41(a)(1) to calculate the credit (commonly referred to as the regular credit) or a taxpayer can make an election to apply the ASC rules and credit rate percentages under section 41(c)(5) to calculate the credit. Section 41(c)(5)(C) provides that an ASC election under section 41(c)(5) applies to the taxable year for which it is made and all succeeding taxable years unless revoked with the consent of the Secretary.

On June 10, 2011, the Treasury Department and the IRS published final regulations (TD 9528) (2011 Final Regulations) in the **Federal Register** (76 FR 33994) relating to the election and calculation of the ASC. Section 1.41-9(b)(2) provides that a taxpayer makes an election under section 41(c)(5) by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the ASC election, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. Section 1.41-9(b)(2) also provides that a taxpayer may not make an election under section 41(c)(5) on an amended return and that an extension of time to make an election under

section 41(c)(5) will not be granted under §301.9100-3.

Following the publication of the 2011 Final Regulations, the Treasury Department and the IRS received requests to amend the regulations to allow taxpayers to make an ASC election on an amended return. The requests explained that the burden of substantiating expenditures and costs for the base period under the regular credit can be costly, time-consuming, and difficult, and suggested that taxpayers often need additional time to determine whether to claim the regular credit or the ASC.

On June 3, 2014, the Treasury Department and the IRS published a notice of proposed rulemaking by cross-reference to temporary regulations (REG–133495–13) in the **Federal Register** (79 FR 31892), and final and temporary regulations (TD 9666) (the Temporary Regulations) in the **Federal Register** (79 FR 31863). The final regulations removed the rule in §1.41-9(b)(2) that prohibited a taxpayer from making an ASC election for a tax year on an amended return. In its place, the Temporary Regulations provided a rule allowing a taxpayer to make an ASC election for a tax year on an amended return if the taxpayer had not previously claimed a section 41 credit for that tax year on an original or amended return. In addition, the Temporary Regulations provided that a taxpayer that is a member of a controlled group in a tax year may not make an election under section 41(c)(5) for that tax year on an amended return if any member of the controlled group for that year claimed the research credit using a method other than the ASC on an original or amended return.

Written and electronic comments responding to the proposed regulations were received. No requests for a public hearing were made and no public hearing was held.

After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments and Explanation of Provisions

Interaction with Section 280C Elections

A commenter requested clarification regarding whether a section 280C(c)(3) election made for a taxable year on line 17 of Form 6765, Credit For Increasing Research Activities, where no amount of regular credit is claimed, will be viewed by the IRS as a claim of the section 41(a)(1) credit and preclude an ASC election from being made on an amended return for that taxable year. Section 280(c)(3) allows a taxpayer to make an annual irrevocable election to claim a reduced research credit rather than reducing the section 174 deduction, as required by section 280(c)(1). A section 280C(c)(3) election must be made on an original return. If a taxpayer is undecided whether to claim the regular credit for a taxable year but wants to preserve the operative effect of the section 280C(c)(3) election for that taxable year, then the taxpayer will make the section 280C(c)(3) election on line 17 of Form 6765, but leave the remaining section of the form blank. A section 280C(c)(3) election on line 17 of Form 6765 made in a taxable year does not, in and of itself, constitute a credit claim under section 41(a)(1), and accordingly does not preclude a taxpayer from making an ASC election on an amended return for that taxable year.

Section 9100 Relief

One commenter requested that the final regulations allow an extension of time to make an election under section 41(c)(5) under §301.9100-3. Under §301.9100-3(c), the

Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Under §301.9100-3(c)(1)(ii), the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. Because the final regulations allow a taxpayer to amend its return to make the ASC election in a taxable year that is not closed by the period of limitations for assessment under section 6501(a) if no credit under section 41(a)(1) was claimed in the prior taxable year on an original or amended return, an extension of time under §301.9100-3 to make the ASC election is not necessary during this period. An extension of time to make an ASC election in a taxable year closed by the period of limitations on assessment under section 6501(a) ordinarily prejudices the interests of the government. See section 301.9100-3(c)(1)(ii). Accordingly, the final regulations retain the rule that an extension of time to make an election under section 41(c)(5) will not be granted under §301.9100-3.

Period for Making an ASC Election

One commenter requested that the final regulations provide that a taxpayer may make an ASC election for an earlier, closed tax year on a later year's return in which a research credit from that closed year is reported on a carryforward schedule, or actually used as a credit against tax, so long as no intervening amended return claiming a

research credit for that tax year using a different method has been claimed. The Temporary Regulations only permitted a taxpayer to elect the ASC on an amended return for taxable years ending before June 3, 2014, (the effective/applicability date of those regulations) if the taxpayer makes the election before the period of limitations for assessment of tax has expired for that year. The rule in the Temporary Regulations provided a reasonable time period for taxpayers to determine whether or not to make an ASC election with respect to a prior, open tax year. To permit a taxpayer to make an ASC election for a tax year in which the period of limitations for assessment of tax has expired has the practical effect of permitting the taxpayer to make an ASC election on a return that cannot be amended. Therefore, these final regulations do not adopt this suggested modification.

One commenter requested that these final regulations provide that an ASC election can be made on an amended return for a tax year so long as the period for making a refund claim under section 6511 has not expired for that tax year, even in cases where the statute of limitations on assessment under section 6501 is closed. These final regulations retain the rule of the Temporary Regulations that a taxpayer must make an ASC election on an amended return before the statute of limitations on assessment under section 6501(a) is closed. The general period under the statute of limitations on assessment under section 6501(a), which is three years after the tax return is filed, provides a reasonable time for taxpayers to file an ASC election on an amended return, and a reasonable time for the IRS to examine the amended return. This rule also preserves the integrity the of the rule in the final regulations providing that

an extension of time to make an election under section 41(c)(5) will not be granted under §301.9100-3. Under §301.9100-3, the interests of the government are ordinarily prejudiced if the taxable year in which a regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under §301.9100. This requirement is mitigated by the fact that the period of limitations on assessment may be extended by agreement of the IRS and the taxpayer. For clarity, the language found in the effective date of the Temporary Regulations referencing the period of limitations for assessment of tax is added to the text of the final regulations under §1.41-9(b)(2) relating to the time and manner of making the ASC election.

Controlled Group ASC Elections

One commenter requested that the final regulations modify the rules for controlled group ASC elections under §1.41-9(b)(4), under which only the designated member of a controlled group may make or revoke an ASC election. Revising those rules is beyond the scope of these regulations. Therefore, the final regulations do not amend §1.41-9(b)(4).

Modification of the Election Rule

One commenter requested that these final regulations amend the rule in the Temporary Regulations that allows a taxpayer to make an ASC election for a tax year on an amended return only if the taxpayer has not previously claimed the section 41 credit on its original return or an amended return for that tax year to clarify that the

previously claimed section 41 credit is determined under section 41(a)(1), and not under sections 41(a)(2) or (3). The commenter stated that the ASC is an alternative method to the regular credit under section 41(a)(1), and whether a taxpayer elects the ASC or claims the regular credit does not impact the determination of the credits allowable under sections 41(a)(2) and 41(a)(3). This approach is consistent with the language of section 41(c)(5)(A) and §1.41-9(a), which specifically reference section 41(a)(1).

Accordingly, the final regulations provide that a taxpayer may make an ASC election for a tax year on an amended return only if the taxpayer has not previously claimed the section 41(a)(1) credit on its original return or an amended return for that tax year.

Effect on Other Documents

The Temporary Regulations are obsolete for taxable years beginning on or after

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities may make an ASC election on an amended return pursuant to these regulations, the economic impact of any collection burden on these entities relating to this election is

minimal because the regulations will result in a benefit to taxpayers by providing additional time for taxpayer to calculate and elect the ASC. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.41-9 also issued under 26 U.S.C. 41(c)(5)(C). * * *

Par. 2. Section 1.41-9 is amended by:

1. Revising paragraph (b)(2).
2. Adding a third and fourth sentence to paragraph (d).

The revision and addition read as follows:

§1.41-9 Alternative simplified credit.

* * * * *

(b) * * *

(2) Time and manner of election. A taxpayer makes an election under section 41(c)(5) by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. A taxpayer may make an election under section 41(c)(5) for a tax year on an amended return, but only if the taxpayer has not previously claimed a section 41(a)(1) credit on its original return or an amended return for that tax year, and only if that tax year is not closed by the period of limitations on assessment under section 6501(a). An extension of time to make an election under section 41(c)(5) will not be granted under §301.9100-3 of this chapter. A taxpayer that is a member of a controlled group in a tax year may not make an election under section 41(c)(5) for that tax year on an amended return if any member of the controlled group for that tax year previously claimed the research credit under section 41(a)(1) using a method other than the ASC on an original or amended return for that tax year. See paragraph (b)(4) of this section for additional rules concerning controlled groups. See also §1.41-6(b)(1) requiring that all members of the controlled group use the same method of computation.

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(d) Effective/applicability date. * * * Paragraph (b)(2) of this section applies to elections with respect to taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For taxable years ending before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see §1.41-9T as contained in 26 CFR part 1, revised April 1, 2015.

§1.41-9T [Removed]

Par. 3. Section 1.41-9T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: February 3, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015-04111 Filed 02/26/2015 at 8:45 am;

Publication Date: 02/27/2015]