

§41 - CREDIT FOR INCREASING RESEARCH ACTIVITIES

§3111 - RATE OF TAX

IRC §41(h) and §3111(f) as modified by Sec. 13902 of the Inflation Reduction Act of 2022

Increase in Research Credit Against Payroll Tax for Small Businesses

§41(h) TREATMENT OF CREDIT FOR QUALIFIED SMALL BUSINESSES

- (1) **IN GENERAL** At the election of a qualified small business for any taxable year, section 3111(f) shall apply to the payroll tax credit portion of the credit otherwise determined under subsection (a) for the taxable year and such portion shall not be treated (other than for purposes of section 280C) as a credit determined under subsection (a).
- (2) **PAYROLL TAX CREDIT PORTION** For purposes of this subsection, the payroll tax credit portion of the credit determined under subsection (a) with respect to any qualified small business for any taxable year is the least of—
 - (A) the amount specified in the election made under this subsection,
 - (B) the credit determined under subsection (a) for the taxable year (determined before the application of this subsection), or
 - (C) in the case of a qualified small business other than a partnership or S corporation, the amount of the business credit carryforward under section 39 carried from the taxable year (determined before the application of this subsection to the taxable year).
- (3) **QUALIFIED SMALL BUSINESS** For purposes of this subsection—
 - (A) In general The term “qualified small business” means, with respect to any taxable year—
 - (i) a corporation or partnership, if—
 - (I) the gross receipts (as determined under the rules of section 448(c)(3), without regard to subparagraph (A) thereof) of such entity for the taxable year is less than \$5,000,000, and
 - (II) such entity did not have gross receipts (as so determined) for any taxable year preceding the 5-taxable-year period ending with such taxable year, and
 - (ii) any person (other than a corporation or partnership) who meets the requirements of subclauses (I) and (II) of clause (i), determined—
 - (I) by substituting “person” for “entity” each place it appears, and
 - (II) by only taking into account the aggregate gross receipts received by such person in carrying on all trades or businesses of such person.
 - (B) **Limitation** Such term shall not include an organization which is exempt from taxation under section 501.
- (4) **ELECTION**

- (A) In general Any election under this subsection for any taxable year—
- (i) shall specify the amount of the credit to which such election applies,
 - (ii) shall be made on or before the due date (including extensions) of—
 - (I) in the case of a qualified small business which is a partnership, the return required to be filed under section 6031,
 - (II) in the case of a qualified small business which is an S corporation, the return required to be filed under section 6037, and
 - (III) in the case of any other qualified small business, the return of tax for the taxable year, and
 - (iii) may be revoked only with the consent of the Secretary.

(B) Limitations

- (i) Amount ~~—The amount~~

(I) In general—The amount specified in any election made under this subsection shall not exceed \$250,000.

(II) Increase—In the case of taxable years beginning after December 31, 2022, the amount in subclause (I) shall be increased by \$250,000.

- (ii) Number of taxable years A person may not make an election under this subsection if such person (or any other person treated as a single taxpayer with such person under paragraph (5)(A)) has made an election under this subsection for 5 or more preceding taxable years.

- (C) Special rule for partnerships and S corporations In the case of a qualified small business which is a partnership or S corporation, the election made under this subsection shall be made at the entity level.

(5) AGGREGATION RULES

- (A) In general Except as provided in subparagraph (B), all persons or entities treated as a single taxpayer under subsection (f)(1) shall be treated as a single taxpayer for purposes of this subsection.

- (B) Special rules For purposes of this subsection and section 3111(f)—

- (i) each of the persons treated as a single taxpayer under subparagraph (A) may separately make the election under paragraph (1) for any taxable year, and

- (ii) each of the \$250,000 amounts s under paragraph (4)(B)(i) shall be allocated among all persons treated as a single taxpayer under subparagraph (A) in the same manner as under subparagraph (A)(ii) or (B)(ii) of subsection (f)(1), whichever is applicable.

- (6) REGULATIONS The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

- (A) regulations to prevent the avoidance of the purposes of the limitations and aggregation rules under this subsection through the use of successor companies or other means,
- (B) regulations to minimize compliance and record-keeping burdens under this subsection, and
- (C) regulations for recapturing the benefit of credits determined under section 3111(f) in cases where there is a subsequent adjustment to the payroll tax credit portion of the credit determined under subsection (a), including requiring amended income tax returns in the cases where there is such an adjustment.

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§3111, RATE OF TAX

§3111(f) CREDIT FOR RESEARCH EXPENDITURES OF QUALIFIED SMALL BUSINESSES

(1) IN GENERAL In the case of a taxpayer who has made an election under section 41(h) for a taxable year,

(A) there shall be allowed as a credit against the tax imposed by subsection (a) for the first calendar quarter which begins after the date on which the taxpayer files the return specified in section 41(h)(4)(A)(ii) an amount equal to ~~so much of~~ the payroll tax credit portion determined under section 41(h)(2) ~~as does not exceed the limitation of subclause (I) of section 41(h)(4)(B)(i) (applied without regard to subclause (II) thereof), and-~~

(B) there shall be allowed as a credit against the tax imposed by subsection (b) for the first calendar quarter which begins after the date on which the taxpayer files the return specified in section 41(h)(4)(A)(ii) an amount equal to so much of the payroll tax credit portion determined under section 41(h)(2) as is not allowed as a credit under subparagraph (A).

(2) LIMITATION The credit allowed by paragraph (1)(A) shall not exceed the tax imposed by subsection (a) for any calendar quarter, and the credit allowed by paragraph (1)(B) shall not exceed the tax imposed by subsection (b) for any calendar quarter on the wages paid with respect to the employment of all individuals in the employ of the employer.

(3) CARRYOVER OF UNUSED CREDIT If the amount of ~~the any~~ credit under paragraph (1) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be carried to the succeeding calendar quarter and allowed as a credit under paragraph (1) for such quarter.

(4) DEDUCTION ALLOWED FOR CREDITED AMOUNTS The credits allowed under paragraph (1) shall not be taken into account for purposes of determining the amount of any deduction allowed under chapter 1 for taxes imposed under subsection (a) or (b).

Effective date: Tax years beginning after 12/31/22.