



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9832]

RIN 1545-BL76

Allocation of Controlled Group Research Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the allocation of the credit for increasing research activities (research credit) to corporations and trades or businesses under common control (controlled groups). This document also contains final regulations relating to the allocation of the railroad track maintenance credit and the election for a reduced research credit.

DATES: Effective date: These regulations are effective on April 2, 2018.

Applicability date: For dates of applicability, see §§1.41-6(j), 1.45G-1(g), and 1.280C-4(c).

FOR FURTHER INFORMATION CONTACT: James Holmes, at (202) 317-4137; (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide rules relating to sections 41, 45G, and 280C of the Internal Revenue Code (Code). On April 3,

2015, the Department of the Treasury (Treasury Department) and the IRS published final and temporary regulations (TD 9717) (temporary regulations) in the **Federal Register** (80 FR 18096) and a notice of proposed rulemaking by cross-reference to the temporary regulations (REG-133489-13) in the **Federal Register** (80 FR 18171) (proposed regulations). On April 27, 2015, the Treasury Department and the IRS published corrections to TD 9717 in the **Federal Register** (80 FR 23237 and 80 FR 23238). The temporary regulations expire on April 2, 2018.

The preamble to the temporary regulations fully describes the updates to the regulations under sections 41, 45G, and 280C. See 80 FR 18097, April 3, 2015. The temporary regulations updated the section 41 rules in a manner that is consistent with the amendments made to section 41(f)(1)(A)(ii) and section 41(f)(1)(B)(ii) contained in Section 301(c) of the American Taxpayer Relief Act of 2012, Public Law 112-240, H.R. 8 (ATRA). The temporary regulations also updated the regulations under §1.45G-1(f) and an example under §1.280C-4(b)(2) because they are based on the rules of section 41(f) in effect before the ATRA amendments.

One written comment responding to the proposed regulations was received. No requests for a public hearing were made and no public hearing was held. After consideration of the comment, the proposed regulations are adopted without change by this Treasury decision.

Summary of Comment and Explanation of Provisions

No comments were received related to the proposed regulations under section 41 or section 280C. One commenter requested the regulations under §1.45G-1(f)(8) be amended to explicitly provide that qualified railroad track maintenance expenditures (QRTMEs) associated with a track assignment reside with the assignee (and not with the track owner) when there has been an intra-group track assignment. Revising those rules is beyond the scope of these regulations. Therefore, the Treasury Department and IRS decline to adopt the comment.

Effect on Other Documents

The temporary regulations are obsolete for taxable years beginning on or after April 2, 2018.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because the final regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received on the proposed regulations.

These final regulations provide necessary guidance for corporations that file a consolidated return regarding the allocation of the group credit to members of certain controlled groups of corporations and trades or businesses under common control. It is necessary to provide this administrative relief for these controlled groups as of April 2, 2018, the expiration date of the temporary regulations, to remove impediments to claiming the research and railroad track maintenance credits and making the election for a reduced research credit. Accordingly, good cause is found for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d).

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 is amended by revising the sectional authority entires for §§1.41-6 and 1.280C-4 and adding a sectional authority for §1.45G-1 in numerical order to read in part as follows:

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

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Section 1.41-6 also issued under 26 U.S.C. 41(f)(1) and 1502.

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Section 1.45G-1 also issued under 26 U.S.C. 45G(e)(2).

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Section 1.280C-4 also issued under 26 U.S.C. 280C(c)(4)

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Par. 2. Section 1.41-6 is amended by revising paragraphs (c), (d)(1) and (3), (e), and (j)(4) and (5) to read as follows:

§1.41-6 Aggregation of expenditures.

* * * * *

(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.

* * * * *

(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.

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(j) * * *

(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.

§1.41-6T [Removed]

Par. 3. Section 1.41-6T is removed.

Par. 4. Section 1.45G-1 is amended by revising paragraphs (f)(4) and (5) and (g)(4) and (5) to read as follows:

§1.45G-1 Railroad track maintenance credit.

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(f) * * *

(4) 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 QRTMEs taken into account for the taxable year by such controlled group for purposes of the credit.

(5) Special rules for consolidated groups—(i) In general. For purposes of applying paragraph (f)(4) 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.

(ii) 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 QRTMEs taken into account for the taxable year by such consolidated group for purposes of the credit.

* * * * *

(g) * * *

(4) Taxable years beginning after December 31, 2011. Paragraphs (f)(4) and (5) and (g)(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 §1.45G-1T as contained in 26 CFR part 1, as revised April 1, 2017.

(5) Taxable years beginning before January 1, 2012. See §1.45-1 as contained in 26 CFR part 1, revised April 1, 2014.

§1.45G-1T [Removed]

Par 5. Section 1.45G-1T is removed.

Par. 6. Section 1.280C-4 is amended by revising paragraphs (b)(2) and (c)(2) and (3) to read as follows:

§1.280C-4 Credit for increasing research activities.

* * * * *

(b) * * *

(2) Example. The following example illustrates an application of paragraph (b) of this section: A, B, and C, all of which are calendar year taxpayers, are members of a controlled group of corporations (within the meaning of section 41(f)(5)). A, B, and C each attach a statement to the 2012 Form 6765, "Credit for Increasing Research Activities," showing A and C were the only members of the controlled group to have qualified research expenses when calculating the group credit. A and C report their allocated portions of the group credit on the 2012 Form 6765 and B reports no research credit on Form 6765. Pursuant to paragraph (a) of this section, A and B, but not C, each make an election for the reduced credit under section 280C(c)(3)(B) on the 2012 Form

6765. In December 2013, B determines it had qualified research expenses in 2012 resulting in an increased group credit. On an amended 2012 Form 6765, A, B, and C each report their allocated portions of the group credit. B reports its credit as a regular credit under section 41(a) and reduces the credit under section 280C(c)(3)(B). C may not reduce its credit under section 280C(c)(3)(B) because C did not make an election for the reduced credit with its original return.

(c) * * *

(2) Taxable years beginning after December 31, 2011. Paragraphs (b)(2) and (c)(2) and (3) of this section apply to taxable years beginning on or after April 2, 2018. For taxable years ending before April 2, 2018, see §1.280C-4T as contained in 26 CFR part 1, as revised April 1, 2017.

(3) For taxable years ending before January 1, 2012. See §1.280C-4 as contained in 26 CFR part 1, revised April 1, 2014.

§1.280C-4T [Removed]

Par. 7. Section 1.280C-4T is removed.

Kirsten Wielobob,
Deputy Commissioner for Services and Enforcement.

Approved: March 7, 2018.

David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).
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