

## Part III - Administrative, Procedural and Miscellaneous

### Recordkeeping Agreement Pilot Program Involving Credit for Increasing Research Activities

Notice 2004-11

#### SECTION 1. PURPOSE

This notice announces a pilot program that will permit the Internal Revenue Service (Service) and large and mid-size business taxpayers to enter into research credit recordkeeping agreements (RCRAs). If a taxpayer complies with the terms of a RCRA, then the Service will deem the taxpayer to have satisfied the recordkeeping requirements of section 6001 of the Internal Revenue Code (Code) for purposes of the credit for increasing research activities under section 41 (research credit). A RCRA does not relieve the taxpayer of its section 6001 recordkeeping obligations for purposes of any other provision of the Code.

The purposes of the pilot program are to develop and evaluate a procedure:

1. To resolve issues concerning the type and amount of documents that a taxpayer must maintain, retain, and produce to satisfy the recordkeeping requirements of section 6001 for the research credit; and
2. To reduce the costs, burdens, and delays frequently encountered by taxpayers and the Service in examinations involving the research credit.

## SECTION 2. DESCRIPTION OF THE PILOT PROGRAM

The Large and Mid-Size Business Operating Division (LMSB) will administer the pilot program. The pilot program is available to LMSB taxpayers who have claimed the research credit on a timely filed original Form 1120, "U.S. Corporation Income Tax Return," series return if the return is currently under examination. LMSB anticipates that it may select five to ten applicants for participation in the pilot program.

LMSB intends to establish a team to work with selected applicants to resolve the type and amount of documents that each of these taxpayers must maintain, retain, and produce with respect to the taxable years covered by the RCRA to satisfy the recordkeeping requirements of section 6001 for the research credit. Pilot program participants may be asked to evaluate the pilot program. The Service will evaluate the program and it may be extended, with modifications, on a permanent basis.

## SECTION 3. DESCRIPTION OF A RCRA

The Service and a taxpayer will enter into a RCRA through a letter of understanding signed by the Industry Director. The letter of understanding will specify the type and amount of documents that the taxpayer must maintain, retain, and produce to be deemed to satisfy the recordkeeping requirements of section 6001 for the research credit.

A RCRA may cover up to three consecutive taxable years ending after the date of the RCRA's issuance. A RCRA will not cover the following businesses or taxpayers:

1. Any trade or business (or major portion of any trade or business) acquired by the taxpayer after the RCRA was issued;
2. Any corporation that joined the taxpayer's controlled group of corporations

after the RCRA was issued, see I.R.C. § 41(f)(1)(A); and

3. Any trade or business (whether or not incorporated) that was not under common control with the taxpayer on the date the RCRA was issued, see I.R.C. § 41(f)(1)(B).

#### SECTION 4. REQUEST TO PARTICIPATE IN THE RCRA PILOT PROGRAM

##### 01 Content of request.

A taxpayer must submit a written request to participate in the pilot program to the Team Manager assigned to the examination. Taxpayers should submit the request on or before May 10, 2004. The request to participate in the RCRA pilot program must contain the following information:

1. The names, addresses, telephone numbers, and taxpayer identification numbers of all members of the taxpayer's controlled group of corporations and trades or businesses under common control with the taxpayer;

2. The name, title, address, and telephone number of a contact person and a properly executed Form 2848, "Power of Attorney and Declaration of Representative," if the information contact is an authorized representative of the taxpayer;

3. The location of the person responsible for the taxpayer's tax matters;

4. The location of the taxpayer's research credit records;

5. A discussion of the taxpayer's suitability for the pilot program and any unique benefits that may result from a RCRA with the taxpayer;

6. A statement that the taxpayer agrees that interviews and the inspection of the taxpayer's books and records under the RCRA procedures (see Section 6): (1) do not constitute an examination or an inspection of books of account for purposes of section

7605(b) or any administrative provisions adopted by the Service, and (2) will not preclude or impede a later examination of a return or inspection of records under section 7602 or any administrative provisions adopted by the Service for any taxable year.

7. A statement that the Service need not comply with any applicable procedural restrictions (including providing notice under section 7605(b)) before beginning an examination or inspection under RCRA procedures (see Section 6); and

8. A statement that the taxpayer is willing to participate in the pilot program and to evaluate the pilot program.

.02 Signature.

The taxpayer or the taxpayer's authorized representative must sign the request to participate in the RCRA pilot program. The request must include a copy of Form 2848 if the request is signed by an authorized representative.

.03 No user fee.

The Service will not charge a user fee for a RCRA request during the pilot program.

## SECTION 5. RECOMMENDATION AND SELECTION PROCESS FOR PARTICIPATION IN THE RCRA PILOT PROGRAM

.01 Team Manager's role.

Team Managers will forward a copy of the taxpayer's written request to participate in the pilot program to:

1. The Industry Director for the LMSB industry group with jurisdiction over the taxpayer;

2. The Director, Pre-filing and Technical Guidance, for LMSB; and
3. The Director, Field Specialists, for LMSB.

.02 Recommendation process.

The Team Manager will recommend whether LMSB should accept the taxpayer to participate in the pilot program. The Team Manager will consider the following factors:

1. The taxpayer's cooperation with the Service in the past;
2. The resources needed for the Service to evaluate the taxpayer's records and recordkeeping systems; and
3. The potential benefits of a RCRA.

.03 Selection process.

The selection of a taxpayer for the pilot program is subject to the approval of the Industry Director and the concurrence of the Director, Pre-filing and Technical Guidance. In addition to the factors set forth in Section 5.02, the following factors will be considered in selecting taxpayers to participate in the pilot program:

1. The potential to provide a cross-section of industries; and
2. The probability of the parties completing a RCRA within a reasonable period of time.

.04 Communication with the taxpayer.

The Industry Director or Director, Field Operations, will contact the taxpayer within 14 days after receipt of the request to discuss the taxpayer's suitability for the pilot program. LMSB will notify the taxpayer in writing whether the taxpayer has been selected to participate in the pilot program. If LMSB does not select the taxpayer, the

taxpayer has no right to appeal the decision.

#### SECTION 6. TERMS OF A RCRA

The LMSB team and the taxpayer will negotiate the terms of the RCRA. The LMSB team and the taxpayer will take into account the taxpayer's current recordkeeping systems, records created during research activities, and records used to track costs associated with research activities. A RCRA may require a taxpayer to create and retain records that it does not currently create and retain. The Service will enter into a RCRA only if it determines that the records to be maintained, retained, and produced under the RCRA satisfy the requirements of section 6001 for the research credit.

#### SECTION 7. APPROVAL OF A RCRA

The terms of the RCRA negotiated by the LMSB team and the taxpayer are subject to the approval of the Industry Director and the concurrence of the Director, Pre-filing and Technical Guidance, and the Director, Field Specialists. If the Industry Director approves the negotiated RCRA, the Industry Director will sign a letter of understanding evidencing the terms of the RCRA.

#### SECTION 8. EFFECT OF A RCRA

The taxpayer must maintain, retain, and produce records in accordance with the terms and conditions in the RCRA. The taxpayer's compliance with the RCRA establishes only that the taxpayer has satisfied the recordkeeping requirements of section 6001 for the research credit and does not establish that any amounts will be treated as qualified research expenses for purposes of section 41(b).

With respect to the taxable years covered by the RCRA, a RCRA does not limit the Service's ability to request non-recorded information during examinations through

interviews and other information gathering methods. In addition, the Service during examinations may request non-recorded information, through interviews and other information gathering methods, as well as recorded information not identified in the RCRA, to verify the information contained in documents required under the RCRA if the Service has reason to question the information's accuracy or reliability.

A taxpayer may terminate the RCRA at any time. The Industry Director may terminate the RCRA if the Service determines that the taxpayer has not complied with the terms of the RCRA. The taxpayer may not appeal an Industry Director's decision to terminate a RCRA.

#### SECTION 9. EFFECTIVE DATE

The pilot program is effective on February 9, 2004.

#### SECTION 10. COMMENTS

The Service invites interested persons to comment on the pilot program.

Interested persons should send comments to:

Internal Revenue Service  
Attn: Large and Mid-Size Business Division LM:Q  
Mint Building, 3rd Floor, M-3-148  
1111 Constitution Avenue NW  
Washington, D.C. 20224

#### SECTION 11. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1859.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB

control number.

The collection of information in this notice is in Section 4. This information is required to submit a request to participate in the RCRA Pilot Program. This information will be used to enable the Service to determine whether the applicant is suitable for participation in the RCRA Pilot Program. The collection of information is voluntary to obtain a benefit. The likely respondents are businesses or other for profit institutions.

The estimated total annual reporting burden is 1,170 hours.

The estimated annual burden per respondent varies from 5 hours to 126 hours, depending on individual circumstances, with an estimated average of 18 hours. The estimated number of respondents is 65.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## SECTION 12. CONTACT INFORMATION

The principal author of this notice is Michael Hara of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. Mr. Hara may be contacted at (202) 622-4910 (not a toll-free number).

For information regarding the RCRA Pilot Program, contact Hugh Whitledge, Engineer Technical Advisor, of the LMSB Pre-filing and Technical Guidance Office at (972) 308-7115 (not a toll-free number). Taxpayers interested in participating in the pilot program, or with questions about the pilot program, may also contact the Team

Manager assigned to the examination of the taxpayer before submitting a request to participate in the pilot program.