



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ALL LARGE BUSINESS AND INTERNATIONAL AND SMALL
BUSINESS SELF EMPLOYED EMPLOYEES

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SUBJECT: Interim Guidance on Claims for Refund that Include a Claim for
Credit for Increasing Research Activities

Purpose: This memorandum provides procedural guidance for applying [Field Advice 20214101F](#) (Field Advice) to claims for refund that include a claim for credit for increasing research activities ("research credit claim") and sets forth the procedures that must be followed to determine if the claim is valid. The Field Advice lists the information taxpayers must provide to apprise the Commissioner of the exact basis of the research credit claim filed under Internal Revenue Code (IRC) § 41.

Background/Source(s) of Authority: Pursuant to Treasury Regulation § 301.6402-2(b)(1), a claim must set forth in detail each ground upon which a credit or refund is claimed, facts sufficient to apprise the Commissioner of the exact basis thereof and include a written declaration under the penalties of perjury (specificity requirement). The Field Advice clarifies information that must be provided in order for research credit claims to meet the specificity requirement.

Procedural Change: The validity of a claim that includes a claim for increasing research credit must be determined prior to beginning an examination of the claim for refund. Updated procedures for research credit claims are found on the attachments listed.

- [Attachment 1](#) – Revisions to IRM 4.46.3, LB&I Examination Process, Planning the Examination
- [Attachment 2](#) – Revisions to IRM 4.10.11, Examination of Returns, Claims for Refund and Requests for Abatement
- [Attachment 3](#) – Revisions to IRM 4.1.1, Planning and Special Programs, Planning, Monitoring, and Coordination (SB/SE only)

Effect on Other Documents: This guidance will be incorporated into the IRMs listed by a date not to exceed two years from the effective date of this memorandum.

Effective Date: This guidance is effective for all claims that include a claim for research credit filed on or after January 10, 2022.

Contact: irs.feedback.recredit.claims@irs.gov

Attachments (3)

Distribution: www.irs.gov

Attachment 1 – Revisions to IRM 4.46.3, LB&I Examination Process, Planning the Examination

4.46.3.7.x

Determining the Validity of Refund Claims that Include a Claim for Credit for Increasing Research Activities

(1) Treas. Reg. § 301.6402-2(b)(1) requires taxpayers that are filing a refund claim to apprise the Commissioner of the exact basis for the claim. To satisfy Treas. Reg. § 301.6402-2(b)(1), taxpayers filing a claim for refund that includes a claim for the IRC § 41 research credit must provide, at a minimum, five essential pieces of information.

Item #	Information Needed	Description
1	Identify all the business components that form the factual basis of the IRC § 41 research credit claim for the claim year.	Business components as defined in IRC § 41(d)(2)(B) must be identified.
2	All research activities performed by business component.	This must include a description of what the taxpayer did, and how they did it, by business component. It does not need to describe the four-part test under IRC § 41(d)(1) in detail. Language that simply restates the requirements under the Code or Treasury Regulations is insufficient.
3	All individuals who performed each research activity by business component.	This can be a list, table, or narrative but must include the first and last name or title/position of the person or persons engaged in the research by business component.
4	All the information each individual sought to discover by business component.	This can be a list, table, or narrative providing the information each individual sought to discover.
5	The total qualified 1) employee wage expenses, 2) supply expenses, and 3) contract research expenses.	The claim should provide the total amount of each of these expense types. If the Form 6765 or its equivalent is properly completed, that will satisfy this item.

- (2) In addition to the five criteria listed above, a declaration signed under the penalties of perjury verifying that the facts provided are accurate is required. In most cases, the signature on Forms 1040X or 1120X serves this function.

4.46.3.7.x.x

Transition Period and Time to Perfect

- (1) For claims that include a claim for credit for increasing research activities (“research credit claim”) filed January 10, 2022 through January 9, 2023 (the transition period) taxpayers will be given 45 days to perfect the claim that is timely filed but does not provide the five foundational criteria in [IRM 4.46.3.7.x](#).
- (2) Regarding timeliness, IRC 6511(a) provides the general rule that a claim for credit or refund must be filed within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever is later. [IRM 25.6.1.6.15](#) provides guidance on when a document is treated as filed under the Internal Revenue Code.
- (3) During the transition period, a claim that includes a claim for research credit that would otherwise be considered timely pursuant to IRC 6511(a) but does not meet the requirements of IRM 4.46.3.7.x, will be considered timely filed if perfected within the 45-day timeframe. Taxpayers that fail to provide the required information as listed in IRM 4.46.3.7.x will be notified with [Letter 6428](#), Claim for Credit for Increasing Research Credit Activities - Additional Information Required. The 45-day perfect period will start from the date Letter 6428 is issued. All refund claims that include a claim for research credit filed on or after January 10, 2023, will be subject to the general rules of IRC 6511(a).
- (4) Subsequent submissions of facts and statements to perfect a claim must be accompanied by another written declaration regarding the accuracy of the information provided and signed under the penalties of perjury.

4.46.3.7.x.x.x

Claims Filed During the Transition Period

- (1) For claims filed January 10, 2022 through January 9, 2023 that are routed to the field due to an open examination indicator, LB&I examiners will apply the following procedures for these claims, which are filed within the transition period and provide an opportunity to perfect deficient claims:
 - a) Evaluate the claim for the five criteria outlined in [IRM 4.46.3.7.x](#) and verify that it is signed under penalties of perjury to determine validity and document the results of the evaluation in the case file. This determination should generally be completed within 30 days after received in the field examination team.
 - b) If the claim is determined to be valid, examiners will follow appropriate risking procedures and determine if an examination of the claim is warranted.
 - c) If a claim is determined to be deficient, examiners will first issue [Letter 6428](#), Claim for Credit for Increasing Research Credit Activities - Additional Information Required, allowing 45 days to perfect. If information that meets the requirements of IRM 4.46.3.7.x is received within the 45 days provided,

- the examiner will continue under normal risking procedures. If sufficient information to perfect the claim is not received pursuant to the process set forth in the letter, the claim will be considered deficient, and taxpayers will be issued [Letter 6430](#), No Consideration, Section 41 Claim. Management (i.e. Territory Manager) and counsel must concur that the claim does not meet the criteria outlined in [IRM 4.46.3.7.x](#) prior to issuing [Letter 6430](#).
- d) If the claim is deficient, do not consider the claim issues or include claim language in a report. In addition to providing the taxpayer [Letter 6430](#), a [Form 3870](#), Request for Adjustment, is required to reverse the transaction code posted to the master file and to remove freeze code "-A." EEFax Form 3870 to CCP to input a TC 290 for zero to release the freeze code. Refer to [IRM 21.5.6.4.2](#), -A Freeze.

4.46.3.7.x.x.x.x

Claims Filed After the Transition Period Ends

- (1) Claims that are filed after the transition period ends do not have the opportunity to perfect. LB&I examiners will apply the following procedures for claims filed on or after January 10, 2023 that are routed to the field due to an open examination:
- a) Evaluate the claim for the five criteria outlined in [IRM 4.46.3.7.x](#) and verify that it is signed under penalties of perjury to determine validity and document the results of the evaluation in the case file. This determination should generally be completed within 30 days after received in the field examination team.
- b) If the claim is determined to be valid, examiners will follow appropriate risking procedures and determine if an examination of the claim is warranted.
- c) If the claim is determined to be deficient, examiners will issue [Letter 6430](#), No Consideration, Section 41 Claim to the taxpayer. Management (i.e., Territory Manager) and counsel must concur that the claim does not meet the criteria outlined in [IRM 4.46.3.7.x](#) prior to issuing [Letter 6430](#).
- d) If the claim is deficient, do not consider the claim issues or include claim language in a report. In addition to providing the taxpayer [Letter 6430](#), a [Form 3870](#), Request for Adjustment, is required to reverse the transaction code posted to the master file and to remove freeze code "-A." EEFax Form 3870 to CCP to input a TC 290 for zero to release the freeze code. Refer to [IRM 21.5.6.4.2](#), -A Freeze.

Attachment 2 – Revisions to IRM 4.10.11, Examination of Returns, Claims for Refund and Requests for Abatement

4.10.11.2.1.1.1

Claims for Refund – Required Form and Content – Research Credit Claims

(1) This subsection contains additional guidance specific to the required form and content of claims for refund which include a claim for increasing research activities under IRC §41 (“research credit claims”) **filed** on or after January 10, 2022.

Note: For research credit claims filed January 10, 2022 through January 9, 2023, taxpayers will be given an opportunity to submit additional documentation to “perfect” deficient claims.

(2) [Field Advice 20214101F](#) clarified what information taxpayers must provide for a research credit claim to be valid under Treas. Reg. § 301.6402-2(b)(1). See [IRM 4.46.3.7.X](#), Determining the Validity of Claims for Increasing Research Activities, for the information a taxpayer must submit (at a minimum) for a valid research credit claim.

(3) Generally, research credit claims filed on or after January 10, 2022 are screened at the campus to determine if the claim is valid under Treas. Reg. § 301.6402-2(b)(1). Research credit claims that have been classified and selected for examination by the campus should be considered valid. In some instances, research credit claims bypass campus classification; for example, a Form 1040X given directly to an examiner during an audit, or a claim filed with the campus but routed directly to the group because of an open AIMS status (see [IRM Exhibit 21.5.3-1](#), Claim Processing with Examination Involvement).

- a. If an LB&I examination group receives a research credit claim that bypassed campus classification, they must follow the procedures in [IRM 4.46.3.7.X](#) to determine if the claim is valid (prior to examining the claim).
- b. If an SB/SE examination group receives a research credit claim that bypassed campus classification, prior to examining the claim, they must follow the guidance in the table below to coordinate with their Area PSP and have the claim screened for validity. PSP will determine if the claim is valid or deficient (deficient determinations require Management (i.e. PSP section chief) and Counsel concurrence). See [IRM 4.1.1.6.5.1.1](#), Claims Coordinator – Research Credit Cases, for PSP guidance.

Steps to determine research credit claim validity (SB/SE)	Additional Instructions
Step 1 – Email the request to PSP.	<p>The group manager or examiner (with a copy to the manager) emails an electronic copy of the research credit claim to their Area PSP section chief.</p> <p>Note: All case controls remain with the group.</p>
Step 2 – Receive and document PSP’s determination of the claim’s validity.	<p>PSP evaluates the claim and emails the determination to the group manager or examiner (with a copy to the group manager).</p> <p>Note: Generally, this should be completed within 30 days.</p>
Step 3 – For a valid claim, STOP. Do not complete remaining steps below.	<p>Examiners follow the procedures in this IRM to survey or examine the claim. (To survey a claim before assignment, group managers follow IRM 1.4.40.4.6.3.2.3, Survey Before Assignment - Claims for Refund and Requests for Abatement.)</p>
<p>Step 4 – For a deficient claim filed January 10, 2022 through January 9, 2023, the taxpayer is given an opportunity to “perfect” the deficient claim.</p> <p>Note: For a claim filed after January 9, 2023, skip to Step 5.</p>	<p>Examiners (group managers if the case is in ST10 Unassigned) issue Letter 6428, Claim for Credit for Increasing Research Credit Activities - Additional Information Required, requesting additional information and allowing the taxpayer 45 days to respond. (See IRM 4.10.1.3.6, Use of Fax Machine or Enterprise e-Fax (EEFax) for Taxpayer Communications if the taxpayer wants to provide information by fax.)</p> <ul style="list-style-type: none"> • If information is received within the 45-day period, repeat Steps 1 and 2, emailing the claim and the additional information to PSP to determine if the information provided is sufficient to perfect the claim. • If no information is received within the 45-day period, or PSP determines the additional information is not sufficient to perfect the claim, proceed to Step 5.

Steps to determine research credit claim validity (SB/SE)	Additional Instructions
<p>Step 5 – If information sufficient to “perfect” the claim is not received within the 45-day period OR the deficient claim was filed after January 9, 2023, do not consider the claim.</p>	<ul style="list-style-type: none"> • Ensure the PSP section chief and Counsel concurred with the deficient determination and include documentation in the case file. • Issue Letter 6430, No Consideration, Section 41 Claim – No Response or Insufficient Information, informing the taxpayer the claim cannot be processed. (This is NOT a claim disallowance.) <ul style="list-style-type: none"> Caution: Do not consider the claim issues or include claim disallowance language in a report. • Ensure PSP removed the “-A” freeze (if it was present on IDRS) for the deficient claim. If necessary, email PSP to request they prepare and EEFax Form 3870, Request for Adjustment, to CCP to input a TC 290 for zero to release the freeze code. • See IRM 4.10.11.2.1.4, Claims for Refund - Deficient, for additional information.

**4.10.11.2.1.4
Claims for Refund – Deficient**

(1) A claim for refund that does not meet all claim requirements in [IRM 4.10.11.2.1](#), is deficient.

(2) The procedures for handling a deficient claim for refund depend on whether the taxpayer has been contacted regarding the examination.

- a. If an examiner is assigned a claim for refund, but determines during the pre-contact analysis the claim is not valid, see [IRM 4.10.11.2.4\(4\)](#) for guidance on handling deficient claims.
- b. If during an examination, the taxpayer submits a deficient claim for refund or raises an affirmative issue that does not meet the criteria for a claim for refund, examiners should advise the taxpayer to file a valid claim for refund (before the RSED expires) if they want to protect their opportunity to recover a refund related to the issue. LB&I examiners must refer to [IRM 4.46.3.7.2.2](#), Claims Not Meeting the Standards of Treas. Reg. 301.6402-2. SB/SE examiners may generally consider the issues in a deficient claim.

Exception: For a deficient research credit claim, the claim issues must **not** be considered. See [IRM 4.10.11.2.1.1.1](#) and [IRM 4.46.3.7.X](#) for additional information.

(3) Examiners must not use claim letters or claim for refund language in reports (e.g., references to “disallowing the claim”) for examinations where a deficient claim was raised; such language could be deemed as waiving the defects of the deficient claim.

Attachment 3 – Revisions to IRM 4.1.1, Planning and Special Programs, Planning, Monitoring and Coordination

IRM 4.1.1.6.5.1.1

Claims Coordinator – Research Credit Cases

- (1) For SB/SE cases, PSP claims coordinators are responsible to determine the validity of claims for refund that include claims for increasing research activities under IRC §41 (“research credit claims”) that bypassed campus classification.
- (2) Prior to examining the claim, examiners or group managers will email a copy of the claim to the PSP section chief to request screening when a research credit claim bypassed the normal campus screening because it was given directly to an examiner by the taxpayer during an audit, or it was filed with the campus but routed directly to the group because of an open AIMS status (see [IRM 4.10.11.2.1.1.1](#), Claims for Refund – Required Form and Content – Research Credit Claims).
Note: The examination group maintains all case controls.
- (3) To be valid, a claim for refund which includes a research credit claim must meet the general requirements in [IRM 4.10.11.2.1](#), Claims for Refund – General Requirements. In addition, a Field Advice clarified what information taxpayers must provide for a refund claim which includes a research credit claim to be valid under Treas. Regulation §301.6402-2(b)(1). [See IRM 4.46.3.7.X](#), Determining the Validity of Claims for Increasing Research Activities, for the information a taxpayer must submit (at a minimum) for a valid refund claim which includes a research credit claim.
- (4) The claims coordinator will apply the following procedures to determine the validity of research credit claims:
 - a. Evaluate the claim for the criteria outlined in [IRM 4.46.3.7.X](#). Generally, this should be completed within 30 days of the request. Notify the group of the determination by email (copy the group manager).
 - b. If a claim filed January 10, 2022 through January 9, 2023, is determined deficient, notify the examination group of the reason(s). The taxpayer is given an opportunity to “perfect” the deficient claim. If the examination group receives additional information within the specified timeframes, they will return the claim and new information to PSP to redetermine the claim’s validity. If information to perfect the claim is not received, notify the examination group of the deficient determination. Deficient determinations require the PSP claim coordinator’s section chief and Counsel concurrence.

- c. If a claim filed after January 9, 2023, is determined deficient, obtain PSP section chief and Counsel concurrence and notify the examination group.
- d. If the claim is deficient (after allowing an opportunity to “perfect” if applicable), PSP must also prepare and Eefax Form 3870, Request for Adjustment, to CCP to request a TC 290 for zero to remove freeze code “-A” (if present).

Note: Claims given directly to an examiner will not have a “-A” freeze.