

INTERIM IRM PROCEDURAL UPDATE

DATE: 09/30/2011

NUMBER: WI-21-1011-1582

SUBJECT: Qualifying Therapeutic Discovery Project Program

AFFECTED IRM(s)/SUBSECTION(s): 21.7.4

CHANGE(s):

IRM 21.7.4.4.8.3.1.4 - Added new subsection titled - Form 8942, Application for Certification of Qualified Investments Eligible for Credits and Grants Under the Qualifying Therapeutic Discovery Project Program.

Form 8942, Application for Certification of Qualified Investments Eligible for Credits and Grants Under the Qualifying Therapeutic Discovery Project Program

1. Section 9023, Qualifying Therapeutic Discovery Project, of the Patient Protection and Affordable Care Act, P.L. 111-148, added new section 48D to the Internal Revenue Code (IRC). IRC section 48D, provides for a 50 percent non-refundable investment tax credit up to a maximum credit of \$5 million per firm and \$1 billion overall, for qualified investment in qualified therapeutic discovery projects made in 2009 and 2010. See IRM 21.7.4.4.8, Non Refundable Credits, Income Tax Returns, for more information on non-refundable credits.
2. Taxpayers could elect to receive tax credits that were allocated to them in the form of Treasury grants equal to 50-percent of the qualifying investment, in lieu of a tax credit (A limited number of BMF taxpayers have chosen the tax credit in lieu of the grant.). Notice 2010-45, 2010-23 I.R.B., provides the procedures under which an eligible taxpayer may apply for certification from the Internal Revenue Service (Service) of a qualified investment with respect to a qualifying therapeutic discovery project. In addition, The Act requires recapture of a qualifying credit/grant, where the investment ceases to be a qualified investment or where the grant paid exceeds the amount of the allowable costs.
3. A qualifying therapeutic discovery project under section 48D(c)(1) means a project that is designed to:
 - o Treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, and clinical studies, or carrying out research protocols, for the purpose of securing approval of a product under section 505(b) of the Federal Food, Drug, and Cosmetic Act, or section 351(a) of the Public Health Service Act,

- Diagnose diseases or conditions or to determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions, or
 - Develop a product, process, or technology to further the delivery or administration of therapeutics.
4. An eligible taxpayer is a taxpayer who employs not more than 250 employees in all businesses of the taxpayer at the time of the submission of the application under IRC section 48D(d)(2) of the Code. All persons treated as a single employer under section 52(a) or (b), or section 414(m) or (o), must be so treated for purposes of the definition of an eligible taxpayer. For purposes of this section, the term "employee" includes both full-time and part-time employees but does not include leased employees.
 5. Eligible taxpayers were required to apply for certification from the Internal Revenue Service with respect to a qualifying therapeutic discovery project as eligible for a credit, or for certain taxpayers, a grant in lieu of a credit under the program. Taxpayers must file Form 8942, Application for Certification of Qualified Investments Eligible for Credits and Grants Under the Qualifying Therapeutic Discovery Project Program. Completed Forms 8942 were returned to the Excise Department at the Cincinnati campus. Applications must have been postmarked by July 21, 2010. The Service approved or denied the taxpayer's application no later than October 29, 2010, and notified the taxpayer by letter, of its decision.
 6. The Service consulted with the Department of Health and Human Services (HHS) in conducting this program. As part of the review process for research projects, HHS evaluated each project for its potential to produce new therapies or reduce health care costs. Only projects that showed a reasonable potential to meet these goals was certified as eligible for the credit or grant.
 7. Taxpayers whose applications were accepted or denied, had a TC 971 action code 608 input to the appropriate tax module(s). The action code (ac) reflects whether a credit has been approved or denied, or whether a grant was accepted or denied. If the application was accepted, the TC 971 will show the dollar amount accepted. If the application was denied, no dollar amount will be present.
 8. Accounts Management will input a TC 971 ac 609 when:
 - An amended return is received on an account with a TC 971 ac 608, claiming the credit, or
 - The taxpayer files an amended return recapturing the expenses previously claimed.
 9. Taxpayers filing a claim on TY 2009 for the credit are instructed to indicate "IRC 48D" on the Form 3468 that will be attached to the claim. The taxpayer will also have Form 3800 attached to the claim with an entry on Line 1A. If a claim is received and 1) there is no TC 971 ac 608 on the module, or 2) the TC 971 ac 608 indicates the taxpayer did not receive an approved credit (no dollar amount is present), or 3) if the taxpayer claims an amount greater than the amount of the allocated credit, Accounts Management will route the claim to Exam in the Ogden campus at:
Internal Revenue Service

1973 North Rulon White Blvd.
Mail Stop 7900, Attn: ATSU
Ogden, UT 84404

10. If an amended return is received claiming the credit and there is a TC 971 ac 608 for an amount equal or less than the amount that was claimed, allow the credit. Follow normal Cat-A criteria for working BMF amended returns as specified in various sections of this IRM and in IRM 21.5.3-2, Examination Criteria (CAT-A)-General, and IRM 21.5.3.3, Examination Criteria (CAT-A) – Credits.
11. Taxpayers are required to recapture (repay) the qualified therapeutic discovery credit if the investment ceases to be a qualified investment or where the grant paid exceeds the amount of the allowable costs. If the taxpayer files an amended return to recapture the credit/grant, input TC 290 for the amount that is reported.

Note: If an original Form 1065 tax return is received in Submission Processing reporting the recapture of the credit/grant, SP will copy page 1 of the Form 1065 and attach the Form 4255, Recapture of Investment Credit, and route them to Accounts Management for assessment.