

Instructions for Form 6765

(Rev. December 2017)

Credit for Increasing Research Activities



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 6765 and its instructions, such as legislation enacted after they were published, go to IRS.gov/Form6765.

What's New

Extended Payroll Tax Credit Election. A qualified small business that timely filed a return for a taxable year beginning after December 31, 2015, but failed to make the election for payroll tax credit, may make the election to amend the return on or before December 31, 2017. See Payroll Tax Credit Election, later, for more information.

General Instructions

Purpose of Form

Use Form 6765 to figure and claim the credit for increasing research activities (research credit), to elect the reduced credit under section 280C, and to elect to claim a certain amount of the credit as a payroll tax credit against the employer portion of social security taxes.

Partnerships and S corporations must file this form to claim the credit. All others are generally not required to complete or file this form if their only source for this credit is a partnership, S corporation, estate, or trust. Instead, they can report this credit directly on Form 3800, General Business Credit. The following exception applies: you are a taxpayer that is an estate or trust and the credit can be allocated to beneficiaries. For more details, see the instructions for Form 1041, Schedule K-1, box 13.

Note. Corporations filing an amended return to claim a credit or refund of the research credit, see Notice 2008-39, 2008-13 I.R.B. 684, available at IRS.gov/irb/2008-13_IRB#NOT2008-39 for information on where to file.

Definitions

Qualified Research

The research credit is generally allowed for expenses paid or incurred for qualified research. *Qualified research* means research for which expenses may be treated as section 174 expenses. This research must be undertaken for discovering information that is technological in nature, and its application must be intended for use in developing a new or improved business component of the taxpayer. In addition, substantially all of the activities of the research must be elements of a process of experimentation relating to a new or improved function, performance, reliability, or quality. All of the research activities must be applied separately with respect to each business component of the taxpayer. The research credit generally isn't allowed for the following types of activities.

- Research conducted after the beginning of commercial production.
- Research adapting an existing product or process to a particular customer's need.
- Duplication of an existing product or process.
- Surveys or studies.
- Research relating to certain internal-use computer software.
- Research conducted outside the United States, Puerto Rico, or a U.S. possession.
- Research in the social sciences, arts, or humanities.
- Research funded by another person (or governmental entity).

If you incur qualified clinical testing expenses relating to drugs for certain rare diseases, you can elect to claim the orphan drug credit for these expenses instead of the research credit. See Form 8820, Orphan Drug Credit.

See section 41 and Regulations sections 1.41-2 and 1.41-4 for other definitions and special rules.

Eligible Small Business (For Purposes of Offsetting AMT Only)

An eligible small business is:

- A corporation whose stock isn't publicly traded,
- A partnership, or
- A sole proprietorship.

The average annual gross receipts of the corporation, partnership, or sole proprietorship for the 3-tax-year period preceding the tax year of the credit can't exceed \$50 million. Gross receipts for any tax year must be reduced by returns and allowances made during the year. Any reference to your business also includes a reference to any predecessor of your business. If your business wasn't in existence for the entire 3-year period, base your average annual gross receipts on the period your business existed. Also, if your business had a tax year of less than 12 months, your gross receipts must be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.

Note. Gross receipts must meet the definition under section 448(c)(2) and (3) and Regulations section 1.448-1T(f)(2)(iv).

Member of controlled group, business under common control, or affiliated group. For purposes of the gross receipts test, all members of a controlled group of corporations (as defined in section 52(a)) and all members of a group of businesses under common control (as defined in section 52(b)), are treated as a single person; and all employees of the members of an affiliated service group (as defined in sections 414(m) and (o)) shall be treated as employed by a single person.

Treatment of partners and S corporation shareholders. A partner or S corporation shareholder can't be treated as an eligible small business unless both the partnership or S corporation and the partner or S corporation shareholder meet the gross receipts test as discussed under *Eligible Small Business*, earlier, for the tax year that the credit is treated as a current year general business credit.

Qualified Small Business (Payroll Tax Credit Election)

A qualified small business is a corporation (including an S corporation) or partnership with:

1. Gross receipts of less than \$5 million for the tax year, and
2. No gross receipts for any tax year before the 5-tax-year period ending with the tax year.

Any other person may be considered a qualified small business if the person meets the requirements of (1) and (2) above, taking into account the aggregate gross receipts received in all the trades or businesses.

The term “gross receipts” for purposes of determining whether your business is a qualified small business means gross receipts as determined under section 448(c)(3) (without regard to subparagraph (A) thereof) and Regulations sections 1.448-1T(f)(2)(iii) and (iv). The definition of gross receipts under section 41(c)(7) and Regulations section 1.41-3(c) doesn't apply for this purpose. Any reference to your trade or business also includes a reference to any predecessor of your trade or business. Also, if your trade or business had a tax year of less than 12 months, your gross receipts must be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.

A qualified small business doesn't include a tax-exempt organization under section 501.

Payroll Tax Credit Election

The payroll tax credit election is an annual election made by a qualified small business specifying the amount of research credit, not to exceed \$250,000, that may be used against the employer portion of social security liability. The credit is the smallest of the current year research credit, an elected amount not to exceed \$250,000, or the general business credit carryforward for the tax year (before the application of the payroll tax credit election for the tax year). The general business credit carryforward limitation doesn't apply to partnerships or S corporations. The election must be made on or before the due date of the originally filed income tax return (including extensions). An election can't be made for a tax year if an election was made for 5 or more preceding tax years. The election made by a partnership or S corporation is made at the entity level. Any election to take the payroll tax credit may be revoked only with the consent of the IRS.

Extended payroll tax election. If a qualified small business timely filed its return for a taxable year beginning after December 31, 2015, but failed to make the payroll tax credit election, it may make the election on an amended return filed on or before December 31, 2017. To qualify for the extended election, the business must either: 1) write “FILED PURSUANT TO NOTICE 2017-23” on top of its Form 6765 or 2) attach a statement to its Form 6765 reflecting the payroll tax credit election is made pursuant to Notice 2017-23.

Claiming the credit on employment tax return. A qualified small business that elects to claim the payroll tax credit, will claim the payroll tax credit against the employer's portion of social security tax on its employment tax return for the first quarter that begins after it files the return reflecting the payroll tax election. See Notice 2017-23 for more information. A qualified small business claiming the payroll tax credit on its employment tax return must complete Form

8974, and attach the completed form to the employment tax return.

Special Rules

See section 41(f) and Regulations sections 1.41-6, 1.41-6T, and 1.41-7 for special rules related to:

- Aggregation of expenses for members of controlled groups and businesses under common control;
- Allocation of the credit by partnerships, estates, and trusts;
- Adjustments, if a major portion of a business is acquired or disposed of; and
- Short tax years.

For special rules concerning the allocation and apportionment of research and experimental expenses between U.S. and foreign source income, see sections 861 through 864.

Member of Controlled Group of Corporations or Group of Trades or Businesses Under Common Control (Controlled Group)

For purposes of figuring the credit, all members of a controlled group of corporations (as defined in section 41(f)(1)(A) and (f)(5)) and all members of a group of trades or businesses under common control (as defined in section 41(f)(1)(B) and Regulations section 1.41-6(a)(3)(ii)) are treated as a single taxpayer. Use Section A or B to figure the credit for the entire group. As a member, your credit is determined on a proportionate basis to your share of the aggregate qualified research expenses for increasing research activities taken into account by the group for the research credit. Enter your share of the credit on line 17 or line 34, whichever applies. Attach a statement showing how your share of the credit was figured, the name and employer identification number or taxpayer identification number of the other members of the group, and the designated member. Write “See Attached” next to the entry space for line 17 or line 34.

If a member of a controlled group has filed its return using a method different from that of the designated member, then that member should file an amended return to conform to the designated member's method.

A member of a controlled group can't make an alternative simplified credit (ASC) election in a tax year on an amended return if any member of the controlled group for that tax year previously claimed the research credit using a method other than the ASC on an original or amended return for that year. For additional rules regarding the election (or revocation of the election) of the ASC in Section B by a controlled group of corporations, see Regulation section 1.41-9.

For purposes of the reduced credit election, a member of a controlled group may make the election under section 280C(c)(3). However, only the common parent (within the meaning of Regulations section 1.1502-77(a)(1)(i)) of a consolidated group may make the election on behalf of the members of a consolidated group.

For purposes of the payroll tax credit election, all members of the same controlled group are treated as a single taxpayer. Thus, the aggregate gross receipts of all members of such a group must be taken into account in determining whether a business is a qualified small business. Also see *Qualified Small Business*, earlier. In addition, a

member of such a group may not make a payroll tax credit election if the member (or any other member of the member's group) has made a payroll tax credit election for 5 or more preceding tax years.

Each member of a controlled group separately makes the payroll tax credit election. The amount that each member of the group can separately elect is limited to the least of: (a) the electing member's allocable share of the group credit (determined under the rules discussed above), (b) the electing member's allocable share of the \$250,000 amount, or (c) in the case of an electing member other than a partnership or S corporation, the amount of the electing member's business credit carryforward under section 39 carried from the tax year (determined before the application of the payroll tax credit election for the tax year). The \$250,000 amount is allocated to each member of the group, regardless of whether all members of the group make the payroll tax credit election, on a proportionate basis to each member's share of the aggregate of the qualified research expenses taken into account for the tax year by the group for purposes of the credit.

Specific Instructions

You can:

- Claim the regular credit in Section A, or
- Elect the alternative simplified credit (ASC) in Section B.

You may want to figure your credit using both of the methods for which you are eligible to get the maximum credit allowed.

Once elected, the ASC applies to the current tax year and all later years. A current tax year's ASC election may not be revoked. You may revoke the election for a later tax year by completing Section A relating to the regular credit and attaching the Form 6765 to your timely filed (including extensions) original return for the year to which the revocation applies. See Regulations section 1.41-9(b)(3).

After figuring your credit, you can elect to treat a portion of the credit as a payroll tax credit. Complete Section D to determine the payroll tax credit portion. Taxpayers other than partnerships and S corporations must complete Form 3800 before completing Section D.

Section A—Regular Credit

Skip this section and go to Section B if:

1. You are electing the alternative simplified credit (ASC), or
2. You previously elected the ASC and aren't revoking the election on this return.

Enter the amounts you paid or incurred to energy research consortia for energy research. Energy research doesn't include any research that isn't qualified research. In general, an energy research consortium is any organization described in section 501(c)(3), exempt from tax under section 501(a), organized and operated primarily to conduct energy research, and not a private foundation. See section 41(f)(6) for further details.

Line 1

Any amount included on line 1 can't be included elsewhere on the return.

Line 2

Enter the amounts the corporation (not to include S corporations, personal holding companies, and service

organizations) paid in cash, under a written contract, for basic research to a qualified university, scientific research organization, or grant organization. See section 41(e) for details, including the definitions of qualified organizations.

Line 3

Enter the qualified organization base period amount based on minimum basic research amounts plus maintenance-of-effort amounts for the 3 preceding tax years. See section 41(e) for details.

Line 7

Enter the amount you paid or incurred for the rental or lease of computers used in qualified research. The computer must be located off your premises and you mustn't be the operator or primary user of the computer. Reduce this amount by the amount that you (or any member of a controlled group of corporations or businesses under common control) received or accrued for the right to use substantially identical property.

Line 8

Enter the amounts you paid or incurred, subject to the following limitations.

- 100% of amounts you paid (or incurred) for qualified energy research performed by an eligible small business, a university, or a federal laboratory (see section 41(b)(3)(D) for definitions of those entities). Also include payments to those same entities to the extent they are included as basic research payments in line 2, not to exceed the base period amount in line 3.
- 75% of amounts you paid (or incurred) for qualified research by a qualified research consortium (as defined by section 41(b)(3)(C)(ii)). Also include 75% of the payments to a qualified research consortium to the extent they are included as basic research payments in line 2, not to exceed the base period amount in line 3.
- 65% of amounts you paid (or incurred) for all other qualified research by any other person. Also include 65% of the payments to that person to the extent they are included as basic research payments in line 2, not to exceed the base period amount in line 3.

Note. Prepaid contract research expenses are considered paid in the year the research is actually done.

Line 10

The fixed-base percentage depends on whether you are an existing company or a start-up company.

A start-up company is a taxpayer that had both gross receipts and qualified research expenses either:

- For the first time in a tax year beginning after 1983, or
- For fewer than 3 tax years beginning after 1983 and before 1989.

The fixed-base percentage for a start-up company is figured as follows.

- For the first 5 tax years beginning after 1993 for which you have qualified research expenses, the percentage is 3%.
- For the 6th tax year beginning after 1993 for which you have qualified research expenses, divide the aggregate qualified research expenses for the 4th and 5th such tax years by the aggregate gross receipts for those tax years, then divide the result by 6.
- For the 7th tax year beginning after 1993 for which you have qualified research expenses, divide the aggregate qualified research expenses for the 5th and 6th such tax

years by the aggregate gross receipts for those tax years, then divide the result by 3.

- For the 8th tax year beginning after 1993 for which you have qualified research expenses, divide the aggregate qualified research expenses for the 5th, 6th, and 7th such tax years by the aggregate gross receipts for those tax years, then divide the result by 2.
- For the 9th tax year beginning after 1993 for which you have qualified research expenses, divide the aggregate qualified research expenses for the 5th, 6th, 7th, and 8th such tax years by the aggregate gross receipts for those tax years, then divide the result by 1.5.
- For the 10th tax year beginning after 1993 for which you have qualified research expenses, divide the aggregate qualified research expenses for the 5th through 9th such tax years by the aggregate gross receipts for those tax years, then divide the result by 1.2.
- For the 11th and later tax years beginning after 1993 for which you have qualified research expenses, divide the aggregate qualified research expenses for any 5 of the 5th through 10th such tax years by the aggregate gross receipts for those tax years.

The fixed-base percentage for an existing company (any company that isn't a start-up company) is figured by dividing the aggregate qualified research expenses for the tax years beginning after 1983 and before 1989 by the aggregate gross receipts for those tax years.

The fixed-base percentage for all companies (existing and start-up) must be rounded to the nearest 1/100th of 1% (that is, four decimal places) and can't exceed 16%. In addition, when figuring your fixed-base percentage, you must reflect expenses for qualified research conducted in Puerto Rico or a U.S. possession for all prior tax years included in the computation.

If short tax years are involved, see Regulations section 1.41-3(b).



Reduce gross receipts by returns and allowances. For a foreign corporation, include only gross receipts that are effectively connected with a trade or business in the United States (or in Puerto Rico or a U.S. possession, if applicable).

Line 11

Enter the average annual gross receipts (reduced by returns and allowances) for the 4 tax years preceding the tax year for which the credit is being determined. You may be required to annualize gross receipts for any short tax year. For a foreign corporation, include only gross receipts that are effectively connected with a trade or business in the United States (or in Puerto Rico or a U.S. possession, if applicable).

For a tax year that the credit terminates, the average annual gross receipts for the 4 tax years preceding the termination tax year is prorated for the number of days the credit applied during the tax year.

Line 17

If you are electing the reduced research credit, you must complete Form 6765 (even if no research credits are claimed on the original return) and clearly indicate your intent to make the election. In order for the election to apply, the Form 6765 must be filed with your original timely filed (including extensions) return for the tax year. Once made, the election is irrevocable for that tax year.



Checking the box on line 17 or line 34 to elect the reduced research credit when no research credits are claimed on the original return doesn't mean that you are claiming the regular research credit or that you are making the ASC election.

If you don't elect the reduced credit, you must reduce your otherwise allowable deduction for qualified research expenses or basic research expenses by the amount of the credit on this line. If the credit exceeds the amount allowed as a deduction for the tax year, reduce the amount chargeable to capital account for the year for such expenses by the amount of the excess. Attach a statement to your tax return that lists the deduction amounts (or capitalized expenses) that were reduced. Identify the lines of your return (schedule or forms for capitalized items) on which the reductions were made.

If you make an election to claim a portion of your research credit as a payroll tax credit, the amount elected is treated as a research credit for purposes of the reduced credit.

Section B—Alternative Simplified Credit (ASC)

Complete this section only if, instead of the regular credit:

1. You are electing the ASC, or
2. You previously elected the ASC and aren't revoking the election on this return.

Electing the alternative simplified credit (ASC). You elect the ASC by completing Section B and attaching the completed Form 6765 to your timely filed (including extensions) original return for the tax year the election applies. An ASC election can be made on an amended return for a tax year only if you hadn't previously claimed the research credit on an original return or amended return for that tax year. An extension of time to make the ASC election will not be granted.

Line 29

Enter your qualified research expenses for the prior 3 tax years. If the credit terminates during the tax year, prorate the qualified research expenses for the prior 3 tax years for the number of days the credit applied during the tax year.

Section C—Current Year Credit

Line 35

If the credit on line 17 or line 34 includes amounts paid to employees as wages, and you are claiming a credit for employer differential wage payments based on payments you made to the same employees, enter on line 35 the portion of the credit from Form 8932, line 2, that is attributable to wages that were used to figure the credit on line 17 or line 34 (whichever applies).

See Form 8932, Credit for Employer Differential Wage Payments, for more information on the credit.

Line 37

Enter total credit for increasing research activities from:

- Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., box 15 (code M);
- Schedule K-1 (Form 1120S), Shareholder's Share of Income, Deductions, Credits, etc., box 13 (code M); and
- Schedule K-1 (Form 1041), Beneficiary's Share of Income, Deductions, Credits, etc., box 13 (code I).

| | | |
|----|--|----------|
| 1. | Enter the sum of the following lines from Form 3800, Part I, line 6, and Part II, line 25 and line 36 | 1. _____ |
| 2. | Enter the amount from Form 3800, Part II, line 38 | 2. _____ |
| 3. | Subtract line 2 from line 1 | 3. _____ |
| 4. | Enter the amount from Form 3800, Part I, line 5, and Part II, line 35 | 4. _____ |
| 5. | Current year general business credit carryforward. Subtract line 4 from line 3. If zero or less, enter -0- | 5. _____ |

Partnerships and S corporations must always report the above credits on line 37. Also, estates and trusts that can allocate the source credit to beneficiaries must always report the above credits on line 37. All other filers figuring a separate credit on earlier lines also must report the above credits on line 37. All others not using earlier lines to figure a separate credit can report the above credits directly on Form 3800, Part III, as follows.

- Eligible small businesses, report the credit on line 4i. See the definition of "Eligible Small Business" under *Definitions*, earlier. Also see *Treatment of partners and S corporation shareholders*, earlier.
- All others, report the credit on line 1c.

Line 39

Estates and trusts. Allocate the credit for increasing research activities on line 38 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries' share on line 39.

If the estate or trust is subject to the passive activity rules, include on line 37 any credit for increasing research from passive activities disallowed for prior years and carried forward to this year. Complete Form 8582-CR, *Passive Activity Credit Limitations*, to determine the allowed credit that must be allocated between the estate or trust and the beneficiaries. For details, see the Instructions for Form 8582-CR.

Section D—Qualified Small Business Payroll Tax Election and Payroll Tax Credit

Complete this section only if you are making the payroll tax election. Before completing this section, you must complete

Form 3800 if you are a qualified small business other than a partnership or an S corporation.

Line 41

Check the box on line 41 if you are a qualified small business electing to claim a certain portion of your research credit as a payroll tax credit. See the definition of "Qualified Small Business" under *Definitions*, earlier.

Line 42

Enter the portion of your research credit, figured on line 36, that you are claiming as a payroll tax credit. Don't enter more than \$250,000.

Line 43

Use the worksheet above to figure the general business credit carryforward for the current year.

Line 44

Enter the amount from line 44 on the applicable line of Form 8974, Part 1, column (e), *Qualified Small Business Payroll Tax Credit for Increasing Research Activities*. Use Form 8974 to figure the amount to be applied to your payroll taxes.

A qualified small business claiming a portion of the research credit as a payroll tax credit must adjust the research credit carryforward for the payroll tax credit claimed.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You aren't required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual and business taxpayers filing this form is approved under OMB control number 1545-0074 and 1545-0123 and is included in the estimates shown in the instructions for their individual and business income tax return. The estimated burden for all other taxpayers who file this form is shown below.

| | |
|---|-----------------|
| Recordkeeping | 10 hr., 31 min. |
| Learning about the law or the form | 2 hr., 25 min. |
| Preparing and sending the form to the IRS | 5 hr., 6 min. |

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.