

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

September 28, 2004

Third Party Communication: None
Date of Communication: Not Applicable

Number: **200452032**
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CASE-MIS No.: TAM-124251-04

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Years Involved:
Date of Conference: No Conference Held

LEGEND:

Taxpayer =
X =

ISSUE(S):

1. Is the gross QREs method a "reasonable" method of allocating the group credit for purposes of § 41(f) of the Internal Revenue Code?
2. If so, for taxable years ending before December 29, 1999, may a taxpayer that is a member of a controlled group use the gross QREs method to allocate the group credit even though the other member of the controlled group uses a different method, and the controlled group as a whole claims more than 100 percent of the group credit?

CONCLUSION(S):

1. The gross QREs method is a reasonable method of allocating the group credit for purposes of § 41(f) of the Internal Revenue Code.
2. For taxable years ending before December 29, 1999, a taxpayer that is a member of a controlled group may use the gross QREs method to allocate the group credit where the other member of the controlled group uses a different method, and the controlled group as a whole claims more than 100 percent of the group credit.

FACTS:

Taxpayer is a calendar year taxpayer. During the taxable years at issue, Taxpayer and X were members of the same controlled group of corporations, within the meaning of § 41(f)(5), for purposes of computing the credit for increasing research activities ("Research Credit"). Both Taxpayer and X reached the same result in computing the research credit for the controlled group (group credit). However, Taxpayer and X used different methods to allocate the group credit among the members of the controlled group. As a result, the members of the controlled group collectively claimed more than 100 percent of the group credit. During the taxable years at issue, there were no proposed or final regulations interpreting § 41(f).

LAW AND ANALYSIS:

Section 41 provides a non-refundable income tax credit for qualified research expenses paid or incurred by a taxpayer during the taxable year. Section 41(f)(1)(A) provides that in determining the amount of the credit under § 41 all members of the same controlled group of corporations shall be treated as a single taxpayer, and the credit (if any) allowable by § 41 to each such member shall be its proportionate shares of the qualified research expenses and basic research payments giving rise to the credit.

Section 41(f)(5)(A) provides that the term "controlled group of corporations" has the same meaning given to such term by § 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in § 1563(a)(1).

Section 1563(a)(1) provides that a controlled group of corporations includes a parent-subsidiary controlled group. Section 1563(a)(1) provides, in relevant part, that a parent-subsidiary controlled group is one or more chains of corporations connected through stock ownership with a common parent corporation if – (A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned ... by one or more of the other corporations; and (B) the common parent corporation owns ... stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock

of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

Based solely on the facts submitted and representations made, we conclude that the gross QREs method is a reasonable method of allocating the group credit for purposes of § 41(f). Further, we conclude that for taxable years ending before December 26, 1999, a taxpayer that is a member of a controlled group may use the gross QREs method to allocate the group credit even though the other member of the controlled group uses a different method, and the controlled group as a whole claims more than 100 percent of the group credit.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.