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From: [redacted]
Sent: Monday, January 26, 2026 11:41:33 AM
To: [redacted]
Cc: [redacted]
Bcc:
Subject: Requested National Office Coordination re Denial of Double Benefit

Hi [redacted],

Good morning! Below are our findings on the applicability of mitigation to the double-credit issue in . Our written findings on the other methods of recovery discussed are forthcoming pending implementation of additional comments.

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Issue:

Whether the mitigation rules of I.R.C. §§ 1311-1314 permit the Internal Revenue Service (IRS) to open the Taxpayers , a closed TY, to prevent the Taxpayer from getting a double benefit of the research credit under I.R.C § 41 (RC) and a double credit of the work opportunity credit under I.R.C. § 51 (WOC).

Analysis:

Sections 1311 through 1314 of the Internal Revenue Code provide that the Service may apply mitigation provisions to make adjustments to tax items that would otherwise be prohibited by operation of law, such as where the period of limitation under section 6501 has run. In order for mitigation to apply, (1) correction of the error must be barred at the date of determination by operation of law, (2) there must be a determination as defined under section 1313(a), (3) there must be a circumstance of adjustment as defined under section 1312, and (4) there must be a condition necessary for adjustment as defined under section 1311(b). I.R.C. § 1311.

Section 1313(a) consists of a list of four determinations which satisfy requirement (2) above. There are three relevant determinations for the purposes of this analysis; a closing agreement made under section 7121; a final disposition by the Secretary of a claim for refund; and a written agreement under Treasury Regulation 1.1313(a)-4. The Service has developed Form 2259, Agreement as Determination, for use in the latter scenario, although use of this form is rare.

Section 1312 consists of a list of seven circumstances under which adjustments are authorized. The second circumstance is a double allowance of a deduction or credit, wherein a determination under section 1313(a) allows a taxpayer to claim a credit in one year which was erroneously granted in a separate year. I.R.C. § 1312(2). This is limited to situations in which the credit in question could be applied in one year but for the other, taking into account the double benefit rule. Id.; Thrifty Oil Co. v. Commissioner, 139 T.C. 198, 205 (2012) (holding that double allowances of the same deduction are impermissible absent a showing of congressional intent).

Section 1311(b) establishes the conditions which are necessary for an adjustment under the mitigation provisions to apply. Section 1311(b)(1)(B) applies to adjustments assessed and collected in a like manner to a deficiency, and requires that the position maintained by the taxpayer and adopted in the determination be inconsistent with the erroneous double allowance of the credit.

In the case at hand, requirement one is met. The year in which the excess allowance of the research credit occurred, , is barred from correction by the running of the period of limitation under section 6501. Requirement two is not met, as there has not been a determination as defined in section 1313(a). However, once the Service reaches a determination with respect to taxpayer's refund claim on the amended return, there will be a determination under section 1313(a)(3). Alternatively, it is still possible to enter a closing agreement under section 7121, or Form 2259. Requirement three, a circumstance of adjustment under section 1312, is also met, but only as to a portion of the erroneously overstated credit. The double credit scenario of section 1312(2) requires not only that a credit have been erroneously allowed, but that the service or taxpayer attempt to apply that same credit correctly in another year. It is therefore not enough that the taxpayer incorrectly applied worth of research credit to ; that credit must be correctly applied somewhere else. This precise scenario fits worth of excess research credit calculated by the Service for ; to apply correctly, it should be carried back under section 39 to and applied there. However, the Taxpayer erroneously carried it forward first to , and then as part of the worth of excess research credit to . Since the taxpayer amended their return to claim that amount in the correct year, then there would be a double allowance of credit as described in section 1312(2) that the mitigation provisions could address. If the taxpayer agrees to do so, and maintain this position in the closing agreement (that the appropriate year to apply the worth of research credit is), then requirement four could be met and mitigation could present a valid avenue to reducing the erroneously overstated research credit in by . Finally, section 1311(b)(1) requires the maintenance of an inconsistent position. Here, the adjustment to would be assessed and collected in the same manner as a deficiency under section 1314. Therefore, the determination (i.e., the closing agreement or disposition of the refund claim) would need to adopt the position maintained by the taxpayer with respect to whom the determination is made. The taxpayer's position in the amended return is that the taxpayer is entitled to research credits for tax years .

Granting the refund claim on the amended return would adopt the taxpayer's position with respect to the research credit available for the tax years.

<u>Conclusion:</u>

Since each element of the mitigation provisions are either already met or can be met here, the Secretary shall have one year from the date of the determination to assess and collect the resulting deficiency from . I.R.C. § 1314(b).

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Best wishes,

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