

Current Status of Issue

- * A new Industry Director Directive (IDD) is planned for FY 2008.
- * An ATG for Research Claims is to be issued in FY 2008.
- * Notice 2002-44 has been superseded by Notice 2008-39 which was published in the IRB in March 2008. Under Notice 2008-39, refund claims involving the research credit must generally be filed at a central address in Ogden, UT. The notice eliminates an elective approach allowed under Notice 2002-44 that let taxpayers under audit submit certain research credit claims directly through LMSB audit teams.
- * Enactment of Erroneous Claim Penalty under Section 6676. (May 2007)
- * Issuance of draft Appeals "white paper" on substantiating research credit claims. (Feb 2007)
- * Issuance of Generic Legal Advice Memorandum on reduced research credit elections. (Jan 2008)

Executing IMT Strategy for Tier I Issues

Audit Teams Should:

- Establish the Tier I Issue on IMS using the UIL & SAIN codes per the ID Directive.
- Research the issue on the Tier I website and Research Credit TA website.
- Communicate with the Research Credit Technical Advisors early to determine the strategy and any special requirements for the development of the issue.
- Consider the issue in the audit planning and risk assessment in accordance with the IMT strategy.
- Utilize the audit tools including the mandatory IDR and techniques provided by the IMT to develop the issue.
- Resolve the issue using all resolution tools in alignment with the IMT strategy.

Issue Management Team (IMT)

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Tier 1



Tier I Research Credit Claims

Quick Reference Guide

April, 2008

Issue Owner Executive (IOE)

Lavena Williams, DFO

**Communications, Technology
& Media**

Tier I: Research Credit Claims

Issue Description

Increasing formal and informal Research Claims based on marketed tax products supported by 'studies' are being filed without contemporaneous documentation to support the claims, using high-level estimates, invalid assumptions, lack of nexus between qualified research expenses (QREs) and the business component. Major accounting firms and professional boutique firms are preparing these claims on a contingency fee basis. Audit teams expend enormous resources perfecting these claims and generally disallowing a large portion of the claims. Further, a taxpayer faces limited risk when claims are prepared under a contingency fee agreement.

Administrative Codes

UIL Codes and IMS input:

There are numerous UIL codes for research issues ranging from 41.00-00 to 41.56.00. Examiners should select a '41 series' code related to the most significant issue on the Research Credit Claim.

SAIN Code: 605-Research Credit

Tracking and Project Code: 0551

ITA Code: C160

Issue Specialization Teams

There is no IST currently for this issue.

Industry Director Directives (IDDs)

- * Industry Director's Directive issued on 4/4/07 to announce the designation of the research credit claims issue as a LMSB Tier I issue:
<http://www.irs.gov/businesses/article/0,,id=169273,00.html>
- * LMSB Directive on Amended Returns/Refund Claims Containing Invalid I.R.C. § 280C(c)(3) Elections issued on August 26, 2005:
<http://www.irs.gov/businesses/corporations/article/0,,id=148281,00.html>
- * LMSB Directive on guidance to field on criteria for unacceptable claims based on marketed studies to be issued by June 2008.

Mandatory IDRs

This should be issued as the first IDR at the beginning of all research credit claim examinations. Once the taxpayer responds completely to the IDR, you should provide a copy of the response to a member of the RCTA Team. The RCTA will assist you in determining whether the taxpayer can support its claimed credit and whether or not you should proceed with the examination. The goal is not to expend audit resources reconstructing taxpayer claims, but to audit only claims that can be properly substantiated. This IDR will help you make that determination. If the claim is not adequately supported, you will be asked to issue a Notice of Claim Disallowance.

The Mandatory IDR will be published as part of a new Audit Technique Guide scheduled for June 2008.

Appeals Settlement Guidelines (ASGs)

Currently there are no ASGs for this Tier I issue.

Administrative & Technical Guidance

Notice 2008-39 offers a central filing process for all corporate claims arising under IRC 41.

<http://www.irs.gov/pub/irs-drop/n-08-39.pdf>

Audit Technique Guide (ATG2) (June 2005) provides general guidance on the planning and conduct of an examination of the Research Credit.

http://www.irs.gov/pub/irs-utl/rc_atg2_irsqov_2005_republished_2008.pdf

Claims Audit Technique Guide is planned for release in June 2008.

Sec. 6676 Erroneous claim for refund or credit:

This penalty provision is effective for claims filed after May 25, 2007. A Treasury Regulation project is in process. One of the issues to be addressed is defining reasonable basis.