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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9717]

RIN 1545-BL77

Allocation of Controlled Group Research Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the allocation of the credit for increasing research activities (research credit) to corporations and trades or businesses under common control (controlled groups)... This document also contains final and temporary regulations relating to the allocation of the railroad track maintenance credit and the election for a reduced research credit. The text of these temporary regulations also serves as the text of the proposed regulations (REG-133489-13) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective date: These regulations are effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see §§1.41-6T(j), 1.45G-1T(g), and 1.280C-4T(c).

FOR FURTHER INFORMATION CONTACT: James Holmes, at (202) 317-4137;
(not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final and temporary regulations for §1.41-6, §1.45G-1, and §1.280C-4 of the Income Tax Regulations (26 CFR Part 1). These regulations update the rules in a manner that is consistent with the amendments made to section 41(f)(1)(A)(ii) and section 41(f)(1)(B)(ii) in Section 301(c) of the Act.

Explanation of Provisions

Section 41--Research Credit

Section 41(a) provides an incremental tax credit for increasing research activities and is based on a percentage of a taxpayer's qualified research expenses over a base amount, basic research payments as determined under section 41(e)(1)(A), and amounts paid or incurred to energy research consortiums (collectively, "QREs"). Under section 41(f)(1) and §1.41-6(b), all members of a controlled group are treated as a single taxpayer for purposes of computing the research credit for the group (group credit). Section 1.41-6(b) provides that the group credit is computed by applying all of the section 41 computational rules on an aggregate basis. Section 1.41-6(c) provides a method of allocating a group research credit among the members of the controlled group.

Section 301(c) of the Act amended section 41(f)(1)(A)(ii) and section 41(f)(1)(B)(ii) by requiring the allocation of research credits to each

controlled group member “on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by such controlled group for purposes of this section.” Section 301(c) of the Act applies to taxable years beginning after December 31, 2011.

Former section 41(f)(1)(A)(ii) and former section 41(f)(1)(B)(ii) provided that the research credit allowable to a controlled group member shall be its proportionate shares of the QREs giving rise to the credit. Prior to these regulations, §1.41-6(c)(1)(i) required a controlled group to allocate the group credit in proportion to each member's stand-alone entity credit, as defined in §1.41-6(c)(2), in cases in which the group credit does not exceed the sum of the stand-alone entity credits of all of the members. If the group credit does exceed this sum, then the excess of the group credit over the sum of the stand-alone entity credits of all of the members was allocated in proportion to the QREs of the members of the controlled group. See §1.41-6(c)(1)(ii).

Notice 2013-20 (2013-15 IRB 902 (April 8, 2013)) was released on March 9, 2013, to provide interim guidance relating to the allocation of the controlled group research credit and is effective for taxable years beginning after December 31, 2011. Notice 2013-20 provides that the group credit is allocated to group members based on each member's share of QREs, without regard to whether the member would have a stand-alone entity credit or what the amount of any such credit would be.

The final and temporary regulations implement the Act's changes to the allocation of the controlled group research credit by revising the allocation method in §1.41-6(c), (d), and (e). Section 1.41-6T(c) provides an allocation method that follows the approach taken in Notice 2013-20. Section 1.41-6T(c) provides that the group credit is allocated to group members based on a member's proportionate share of the controlled group's aggregate QREs. Members are no longer required to calculate a stand-alone entity credit. The temporary regulations also remove references to the stand-alone entity credit in §1.41-6(d)(1) and (3). New examples are provided in §1.41-6T(e). The first example illustrates a general application of the allocation method provided in these temporary regulations. The second example demonstrates an allocation under these temporary regulations where a consolidated group is treated as a single member of a controlled group pursuant to §1.41-6T(d).

A commenter to Notice 2013-20 suggested that the IRS adopt a safe harbor under §1.41-6(c) that permits taxpayers to calculate and allocate group credits for taxable years ending prior to January 1, 2013, under the new law. The commenter's proposal would effectively make the Act's amendments retroactive to before the effective date of the statutory change (change effective for taxable years beginning after December 31, 2011). Therefore, the regulations do not adopt this suggestion for taxable years beginning before January 1, 2012. For taxable years beginning before January 1, 2012, taxpayers must apply the rules applicable to such taxable years.

Section 45G--Railroad track maintenance credit (RTMC)

Section 45G, subject to limitations, generally provides a RTMC in an amount equal to fifty percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the year. Section 45G(e)(2) provides, for controlled groups, that rules similar to the rules of section 41(f)(1) shall apply for purposes of section 45G. Section 1.45G-1(f) provides guidance on determining the amount of RTMC under section 45G if a taxpayer is a member of a controlled group. Section 1.45G-1(f) applies rules similar to the rules of §1.41-6 for allocating a group RTMC.

The temporary regulations add §1.45G-1T(f)(4) to provide an allocation method for the RTMC that is consistent with the Act's amendments to section 41(f)(1). Section 1.45G-1T(f)(5)(i) and (ii) of the temporary regulations remove references to the stand-alone entity credit.

Section 280C(c)--Credit for Increasing Research Activities

Section 280C(c)(1) generally disallows otherwise allowable deductions for QREs in an amount equal to the research credit determined under 41(a) for a taxable year. Section 280C(c)(3) provides a method to elect a reduced amount of research credit. Section 280C(c)(4) provides, by reference to section 280C(b)(3), that in the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business treated as being under common control with other trades or business (within the meaning of section 41(f)(1)(B)), section 280C(c) shall be applied under rules prescribed by the Secretary similar to the rules applicable under section 41(f)(1)(A) and (B). Section 1.280C-4(b) relates to the election under

section 280C(c)(3) that a member of a controlled group may make.

Section 1.280C-4(b)(2) contains an example that includes references to the rules in §1.41-6(c). The temporary regulations update the example in §1.280C-4(b)(2) because it describes the rules of section 41(f) in effect before the Act's amendments.

Effect on Other Documents

Notice 2013-20 (2013-15 IRB 902) is obsolete for taxable years beginning on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Effective/Applicability Dates

The temporary regulations are applicable for taxable years beginning on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and expire on **April 2, 2018**. A taxpayer may apply §§1.41-6T, 1.45G-1T, and 1.280C-4T to taxable years beginning after December 31, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For a taxpayer that does not apply these temporary regulations to a taxable year beginning after December 31, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the guidance that applies to such taxable year is contained in Notice 2013-20 (2013-15 IRB 902).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure

Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is James Holmes, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.41-6T also issued under 26 U.S.C. 41(f)(1) * * *

Section 1.45G-1T also issued under 26 U.S.C. 45G(e)(2) * * *

Section 1.280C-4T also issued under 26 U.S.C. 280C(c)(4) * * *

Par. 2. Section 1.41-0 is amended by removing the entries in the table of contents for §1.41-6(c)(1) and §1.41-6(c)(2) and adding an entry for §§1.41-6(j)(4) and (5) to read as follows:

§1.41-0. Table of contents.

* * * * *

(j) * * *

(4) Taxable years beginning after December 31, 2011.

(5) Taxable years ending before January 1, 2012.

Par. 3. Section 1.41-6 is amended by revising paragraphs (c), (d)(1) and (3), and (e) and adding paragraphs (j)(4) and (5) to read as follows:

§1.41-6. Aggregation of expenditures.

* * * * *

(c) [Reserved]. For further guidance, see §1.41-6T(c).

* * * * *

(d) * * *

(1) [Reserved]. For further guidance, see §1.41-6T(d)(1).

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(3) [Reserved]. For further guidance, see §1.41-6T(d)(3).

(e) [Reserved]. For further guidance, see §1.41-6T(e).

* * * * *

(j) * * *

(4) Taxable years beginning after December 31, 2011. [Reserved]. For further guidance, see §1.41-6T(j)(4).

(5) Taxable years ending before January 1, 2012. [Reserved]. For further guidance, see §1.41-6T(j)(5).

Par. 4. Section 1.41-6T is added to read as follows:

§1.41-6T. Aggregation of expenditures (temporary).

(a) through (b) [Reserved]. For further guidance, see §1.41-6(a) through (b).

(c) Allocation of the group credit. The group credit is allocated to each member of the controlled group on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums (collectively “QREs” for purposes of paragraphs (c), (d), and (e) of this section) taken into account for the taxable year by such controlled group for purposes of the credit.

(d) Special rules for consolidated groups—(1) In general. For purposes of applying paragraph (c) of this section, members of a consolidated group who are members of a controlled group are treated as a single member of the controlled group.

(2) [Reserved]. For further guidance, see §1.41-6(d)(2).

(3) Special rule for allocation of group credit among consolidated group members. The portion of the group credit that is allocated to a consolidated group is allocated to each member of the consolidated group on a proportionate basis to its share of the aggregate of the QREs taken into account for the taxable year by such consolidated group for purposes of the credit.

(e) Examples. The following examples illustrate the provisions of paragraphs (c) and (d) of this section.

Example 1. Controlled group. A, B, and C are a controlled group. A had \$100x, B \$300x, and C \$500x of qualified research expenses for the year, totaling \$900x for the group. A, in the course of its trade or business, also made a payment of \$100x to an energy research consortium for energy research. The group's QREs total 1000x and the group calculated its total research credit to be \$60x for the year. Based on each member's proportionate share of the controlled group's aggregate QREs, A is allocated \$12x, B \$18x, and C \$30x of the credit.

Example 2. Consolidated group is a member of controlled group. The controlled group's members are D, E, F, G, and H. F, G, and H file a consolidated return and are treated as a single member (FGH) of the controlled group. D had \$240x, E \$360x, and FGH \$600x of qualified research expenses for the year (\$1,200x aggregate). The group calculated its research credit to be \$100x for the year. Based on the proportion of each member's share of QREs to the controlled group's aggregate QREs for the taxable year D is allocated \$20x, E \$30x, and FGH \$50x of the credit. The \$50x of credit allocated to FGH is then allocated to the consolidated group members based on the proportion of each consolidated group member's share of QREs to the consolidated group's aggregate QREs. F had \$120x, G \$240x, and H \$240x of QREs for the year. Therefore, F is allocated \$10x, G is allocated \$20x, and H is allocated \$20x.

(f) through (i) [Reserved]. For further guidance, see §1.41-6(f) through (i).

(j)(1) through (3) [Reserved]. For further guidance, see §1.41-6(j)(1) through (3).

(4) Taxable years beginning after December 31, 2011. Section 1.41-6T is applicable for taxable years beginning on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may apply §1.41-6T to taxable years beginning after December 31, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For a taxpayer that does

not apply §1.41-6T to a taxable year beginning after December 31, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the guidance that applies to such taxable year is contained in Notice 2013-20 (2013-15 IRB 902).

(5) Taxable years beginning before January 1, 2012. See §1.41-6 as contained in 26 CFR part 1, revised April 1, 2014.

(6) Expiration date. The applicability of §1.41-6T expires on April 2, 2018.

Par. 5. Section 1.45G-0 is amended by removing the entries in the table of contents for §1.45G-1(f)(4)(i) and §1.45G-1(f)(4)(ii) and adding an entry in the table of contents for §§1.45G-1(g)(4) and (5) to read as follows:

§1.45G-0. Table of contents for the railroad track maintenance credit.

* * * * *

(g) * * *

(4) Taxable years beginning after December 31, 2011.

(5) Taxable years beginning before January 1, 2012.

Par. 6. Section 1.45G-1 is amended by revising paragraphs (f)(4) and (f)(5)(i) and (ii) and adding paragraphs (g)(4) and (5) to read as follows:

§1.45G-1. Railroad track maintenance credit.

* * * * *

(f) * * *

(4) [Reserved]. For further guidance, see §1.45G-1T(f)(4).

(5) [Reserved]. For further guidance see §1.45G-1T(f)(5).

(g) * * *

(4) Taxable years beginning after December 31, 2011. [Reserved]. For further guidance see §1.45G-1T(g)(4).

(5) Taxable years beginning before January 1, 2012. [Reserved]. For further guidance see §1.45G-1T(g)(5).

Par. 7. Section 1.45G-1T is added to read as follows:

§1.45G-1T. Railroad track maintenance credit (temporary).

(a) through (e) [Reserved]. For further guidance, see §1.45G-1(a) through (e).

(f)(1) through (3) [Reserved]. For further guidance, see §1.45G-1(f)(1) through (3).

(4) Allocation of the group credit. The group credit is allocated to each member of the controlled group on a proportionate basis to its share of the aggregate of the QRTMEs taken into account for the taxable year by such controlled group for purposes of the credit.

(5) Special rules for consolidated groups—(i) In general. For purposes of applying paragraph (f)(4) of this section, members of a consolidated group who are members of a controlled group are treated as a single member of the controlled group.

(ii) Special rule for allocation of group credit among consolidated group members. The portion of the group credit that is allocated to a consolidated group is allocated to each member of the consolidated group on a proportionate basis to its share of the aggregate of the QRTMEs taken into

account for the taxable year by such consolidated group for purposes of the credit.

(6) through (8) [Reserved]. For further guidance, see §1.45G-1(f)(6) through (8).

(g)(1) through (3) [Reserved]. For further guidance, see §1.45G-1(g)(1) through (3).

(4) Taxable years beginning after December 31, 2011. Section 1.45G-1T is applicable for taxable years beginning on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may apply §1.45G-1T to taxable years beginning after December 31, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For a taxpayer that does not apply §1.45G-1T to a taxable year beginning after December 31, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the guidance that applies to such taxable year is contained in Notice 2013-20 (2013-15 IRB 902).

(5) Taxable years ending before January 1, 2012. See §1.45-1 as contained in 26 CFR part 1, revised April 1, 2014.

(6) Expiration date. The applicability of §1.45G-1T expires on April 2, 2018.

Par. 8. Section 1.280C-4 is amended by revising paragraph (b)(2) , redesignating paragraph (c) as (c)(1) and adding paragraphs (c)(2) and (3) to read as follows:

§1.280C-4. Credit for increasing research activities.

* * * * *

(b) * * *

(2) [Reserved]. For further guidance, see §1.280C-4T(b)(2).

* * * * *

(c) * * *

(2) [Reserved]. For further guidance, see §1.280C-4T(c)(2).

(3) [Reserved]. For further guidance, see §1.280C-4T(c)(3).

Par. 9. Section 1.280C-4T is added to read as follows:

§1.280C-4T. Credit for increasing research activities (temporary).

(a) [Reserved]. For further guidance, see §1.280C-4(a).

(b) Controlled groups of corporations; trades or businesses under common control. (1) [Reserved]. For further guidance, see §1.280C-4(b)(1).

(2) Example. The following example illustrates an application of paragraph (b) of this section: A, B, and C, all of which are calendar year taxpayers, are members of a controlled group of corporations (within the meaning of section 41(f)(5)). A, B, and C each attach a statement to the 2012 Form 6765, "Credit for Increasing Research Activities," showing A and C were the only members of the controlled group to have qualified research expenses when calculating the group credit. A and C report their allocated portions of the group credit on the 2012 Form 6765 and B reports no research credit on Form 6765. Pursuant to §1.280C-4(a), A and B, but not C, each make an election for the reduced credit under section 280(c)(3)(B) on the 2012 Form 6765. In December 2013, B determines it had qualified research expenses in 2012 resulting in an increased group credit. On an amended 2012 Form 6765, A, B, and C each report their allocated portions of the group credit. B reports its credit as a regular credit under section 41(a) and reduces the credit under section 280C(c)(3)(B). C may not reduce its credit under section 280(c)(3)(B) because C did not make an election for the reduced credit with its original return.

(c)(1) [Reserved]. For further guidance see §1.280C-4(c)(1).

(2) Taxable years beginning after December 31, 2011. Section 1.280C-4T is applicable for taxable years beginning on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may apply §1.280C-4T to taxable years beginning after December 31, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For a taxpayer that does not apply §1.280C-4T to a taxable year beginning after December 31, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the guidance that applies to such taxable year is contained in Notice 2013-20 (2013-15 IRB 902).

(3) For taxable years ending before January 1, 2012. See §1.280C-4 as contained in 26 CFR part 1, revised April 1, 2014.

(4) Expiration date. The applicability of paragraph (b)(2) expires on April 2, 2018.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: March 16, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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