


Internal Revenue Code Section 41(h)

Credit for increasing research activities

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(h) Treatment of credit for qualified small businesses.

(1) In general.

At the election of a qualified small business for any taxable year, section 3111(f) shall apply to the payroll tax credit portion of the credit otherwise determined under subsection (a) for the taxable year and such portion shall not be treated (other than for purposes of section 280C) as a credit determined under subsection (a) .

(2) Payroll tax credit portion.

For purposes of this subsection, the payroll tax credit portion of the credit determined under subsection (a) with respect to any qualified small business for any taxable year is the least of-

(A) the amount specified in the election made under this subsection,

(B) the credit determined under subsection (a) for the taxable year (determined before the application of this subsection), or

(C) in the case of a qualified small business other than a partnership or S corporation, the amount of the business credit carryforward under section 39 carried from the taxable year (determined before the application of this subsection to the taxable year).

(3) Qualified small business.

For purposes of this subsection-

(A) In general. The term "qualified small business" means, with respect to any taxable year-

(i) a corporation or partnership, if-

(I) the gross receipts (as determined under the rules of section 448(c)(3) , without regard to subparagraph (A) thereof) of such entity for the taxable year is less than \$5,000,000, and

(II) such entity did not have gross receipts (as so determined) for any taxable year preceding the 5-taxable-year period ending with such taxable year, and

(ii) any person (other than a corporation or partnership) who meets the requirements of subclauses (I) and (II) of clause (i) , determined-

(I) by substituting "person" for "entity" each place it appears, and

(II) by only taking into account the aggregate gross receipts received by such person in carrying on all trades or businesses of such person.

(B) Limitation. Such term shall not include an organization which is exempt from taxation under section 501 .

(4) Election.

(A) In general. Any election under this subsection for any taxable year-

(i) shall specify the amount of the credit to which such election applies,

(ii) shall be made on or before the due date (including extensions) of-

(I) in the case of a qualified small business which is a partnership, the return required to be filed under section 6031 ,

(II) in the case of a qualified small business which is an S corporation, the return required to be filed under section 6037 , and

(III) in the case of any other qualified small business, the return of tax for the taxable year, and

(iii) may be revoked only with the consent of the Secretary.

(B) Limitations.

(i) Amount. The amount specified in any election made under this subsection shall not exceed \$250,000.

(ii) Number of taxable years. A person may not make an election under this subsection if such person (or any other person treated as a single taxpayer with such person under paragraph (5)(A)) has made an election under this subsection for 5 or more preceding taxable years.

(C) Special rule for partnerships and S corporations. In the case of a qualified small business which is a partnership or S corporation, the election made under this subsection shall be made at the entity level.

(5) Aggregation rules.

(A) In general. Except as provided in subparagraph (B) , all persons or entities treated as a single taxpayer under subsection (f)(1) shall be treated as a single taxpayer for purposes of this subsection.

(B) Special rules. For purposes of this subsection and section 3111(f) -

(i) each of the persons treated as a single taxpayer under subparagraph (A) may separately make the election under paragraph (1) for any taxable year, and

(ii) the \$250,000 amount under paragraph (4)(B)(i) shall be allocated among all persons treated as a single taxpayer under subparagraph (A) in

the same manner as under subparagraph (A)(ii) or (B)(ii) of subsection (f)(1) , whichever is applicable.

(6) Regulations.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including-

(A) regulations to prevent the avoidance of the purposes of the limitations and aggregation rules under this subsection through the use of successor companies or other means,

(B) regulations to minimize compliance and recordkeeping burdens under this subsection, and

(C) regulations for recapturing the benefit of credits determined under section 3111(f) in cases where there is a subsequent adjustment to the payroll tax credit portion of the credit determined under subsection (a) , including requiring amended income tax returns in the cases where there is such an adjustment.