

New IRS Guidance Adds Clarity, But May Require More Homework



Federal research and development (R&D) tax credits incentivize business investment in scientific and technological development to spur long-term growth opportunities. Thanks to the ADP R&D Tax Credit Team for this article.

[Recent guidance](#) from the Internal Revenue Service (IRS) clarifies the information required to submit a valid refund claim for a research and development (R&D) tax credit. The memo provides clear instructions on what is required to substantiate an R&D tax credit claim for refund. Providing this information with the original filing has the potential to reduce disputes when the IRS is processing such refund claims.

But it also may mean that employers will have to do more work up front when submitting their R&D expense claim for refund.

Here's a quick overview of what employers need to know.

More requirements, greater clarity

The Office of Chief Counsel Memorandum Number 20214101F (Memorandum) issued by the IRS, dated 9/17/21 and released 10/15/21, sets forth the required information necessary to submit a valid claim for refund for the R&D Tax Credit.

According to the memorandum, to be considered valid by the IRS, an R&D credit refund claim, must at a minimum:

Identify all business components (i.e., new or improved product/process being developed) related to the R&D credit claimed for a tax year.

For each business component identify:

- all research activities performed
- all individuals who performed each research activity
- all the information each individual sought to discover
- total qualified wages, supplies and contract research expenses for the claim year (may be accomplished using IRS Form 6765, Credit for Increasing Research Activities)

Giving employers time to adjust

The good news with regard to the Memorandum is that it provides added clarity on reporting requirements related to R&D tax credit refund claims that could potentially reduce claim disputes. But it also may mean that eligible employers need to be more specific in documents and reporting details related to qualified R&D expenses.

To help employers adapt their R&D tax credit claims practices to the new guidance, the IRS defined a grace period where claimants have until January 10, 2022, before the required information must be included in the research credit refund claim. A subsequent one-year transition period has been defined that allows taxpayers an additional 30 days to "perfect" claims for refund before the IRS' final determination of the claim.

More details to come

Counsel Memoranda are generally internal policy documents for the IRS and do not necessarily represent binding law but do suggest shifts in the IRS treatment and requirements for R&D credit claims.

While the IRS continues to work through details regarding new R&D tax credit requirements, ADP expects additional communications and further information to come.

As Chief Counsel Memoranda do not set precedent, the potential exists for future court cases involving the topics addressed.

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