Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **20214101F**
Release Date: 10/15/2021

CC:LB:3:CH:3:MYCHOU:
POSTS-104459-20

UILC: 6402.04-00, 6402.04-02, 41.00-00

date: September 17, 2021

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subject: I.R.C. § 41 Research Credit Refund Claims

Questions Presented

1. In an administrative claim for refund or credit ("refund claim") for the I.R.C. § 41 research credit, what information must a taxpayer include at the time the refund claim is filed with the Internal Revenue Service (the "Service") for the refund claim to be valid under Treas. Reg. § 301.6402-2(b)(1)?

2. What format must a taxpayer use when providing the information referenced above to the Service?

3. What considerations, if any, are there for the statute of limitations periods for a refund claim for an I.R.C. § 41 research credit?

Short Answers

1. For a taxpayer's refund claim for the I.R.C. § 41 research credit to be valid, the taxpayer must, at a minimum:

    - Identify all the business components to which the I.R.C. § 41 research credit claim relates for that year.

    - For each business component:
        - identify all research activities performed;
        - identify all individuals who performed each research activity; and
        - identify all the information each individual sought to discover.

    - Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year (this may be done using Form 6765, Credit for Increasing Research Activities).

2. A taxpayer must provide a declaration signed under the penalties of perjury verifying that the facts provided are accurate. In most cases, the signature on Forms 1040X or 1120X serves this function. Additionally, a taxpayer should provide the facts in a written statement rather than through the production of documents. However, if a taxpayer provides documents, including a credit study, the taxpayer must specify the exact page(s) that supports a specific fact. A mere volume of documents will not suffice to meet a taxpayer's obligation.

3. For the statute of limitations for credit or refund claims, there are no statutory provisions specific to I.R.C. § 41 research credit claims. Generally, taxpayers may be entitled to a credit or refund only if they have filed a valid claim within three years of the date the Form 1040 or Form 1120 was filed or two years from the time the tax was paid, whichever period expires later. The amount of the credit or refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the claim equal to three years plus any extension of time for filing the return. If no claim was filed within such three-year period, the amount of the credit or refund shall not exceed the portion of tax paid during the two years immediately preceding the filing of the claim. I.R.C. § 6511.

Law and Analysis

A. Legal Requirements for an I.R.C § 41 Research Credit Refund Claim

Refund claims may be made on either original returns or amended returns. This memorandum is directed at the specificity requirement of the Treasury Regulations, and how taxpayers may meet the requirement, as discussed below.

Section 41 of the Internal Revenue Code and case law set out the legal requirements for claiming the research credit. This memorandum is not intended to be a comprehensive review of the law associated with the claiming of a research credit; it addresses only those portions of the law that must necessarily be considered in a refund claim in order for the claim to be valid under the Treasury Regulations.

1. The Specificity Requirement of Treasury Regulation § 301.6402-2

a. Sufficient Facts Must be Provided for a Claim to be Valid

Section 301.6402-2 of the Treasury Regulations prescribes how a taxpayer makes a refund claim, including when the claim may be filed, what forms may be used, the location for filing, signature requirements, and other procedural elements. A valid refund claim must, along with other requirements not discussed herein, "set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof." Treas. Reg. § 301.6402–2(b)(1). Section 301.6402-2(b)(1) of the Treasury Regulations provides in its entirety:

> No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

For purposes of this memorandum, we refer to this language as "the specificity requirement." A purported claim is deficient ("deficient claim") if the taxpayer fails to provide sufficient facts in the manner required by the specificity requirement, and it may be rejected by the Service as such.[1]

The requirement for filing a proper refund claim "is designed both to prevent surprise and to give adequate notice to the Service of the nature of the claim and the specific facts upon which it is predicated, thereby permitting an administrative

[1] For purposes of clarity, this memorandum uses the term "disallow" to refer to the Service's decision to deny a refund claim based on the merits of the tax issue underlying the refund claim and the term "reject" to refer to the Service's decision to not accept a purported refund claim for procedural reasons not related to the merits of the underlying tax issue.

investigation and determination." Computervision Corp. v. United States, 445 F.3d 1355, 1363 (Fed. Cir. 2006), adhered to on denial of reh'g, 467 F.3d 1322 (Fed. Cir. 2006) (internal citations omitted). The claim "advise(s) the appropriate officials of the demands or claims intended to be asserted, so as to insure an orderly administration of the revenue." IA 80 Grp., Inc. & Subsidiaries v. United States, 347 F.3d 1067, 1074 (8th Cir. 2003), citing United States v. Felt & Tarrant Mfg. Co., 283 U.S. 269, 272 (1931)).

The requirement that certain specific facts be provided in a claim allows the Service to determine if a refund should be paid immediately based on the information provided or an examination should be conducted to verify the taxpayer's entitlement to the refund. Requiring that certain specific facts be included with a claim allows the Service to screen for the likelihood of the taxpayer's right to the refund being sought. This information helps the Service avoid paying refunds to taxpayers who have no factual support for their claim and helps the Service effectively allocate its limited resources to determining which procedurally compliant claims to examine.

Section 301.6402-2 of the Treasury Regulations requires that a taxpayer specify *both* the grounds *and* sufficient facts that form the basis for the refund claim.[2] This distinction was discussed in Lockheed Martin: "[t]his regulation [301.6402-2(b)(1)] distinguishes between the ground for the claim—that is, the legal theory upon which the refund is claimed—and facts "sufficient to apprise the Commissioner of the exact basis thereof." Lockheed Martin Corp. v. United States, 210 F.3d 1366, 1371 (Fed. Cir. 2000). It is reasonable, then, for the Service to require that taxpayers provide sufficient facts in their claims and preclude them from merely relying on a legal assertion. Taxpayers who fail to comply fully with the regulations may have their claims rejected. Angelus Milling Co. v. Commissioner, 325 U.S. 293, 297 (1945).[3]

b. Deficient Claims do not Confer Review Jurisdiction on Any Court

For a taxpayer to seek judicial review of a disallowed refund claim, the taxpayer must have first timely submitted a refund claim that complied with all of the regulatory requirements, i.e., a valid refund claim. Otherwise, the federal courts do not have

[2] This requirement in the context of a claim for an I.R.C § 41 research credit is further discussed in Harper v. United States, 3:18-cv-02110-DMS-LL, 2019 WL 1877185 (S.D. Cal. Apr. 25, 2019), rev'd, No. 19-55933, 2021 WL 732970 (9th Cir. Feb. 25, 2021). The district court dismissed the claim because the claim "identified the ground for these credits [but] failed to set forth facts sufficient to apprise the Commissioner of the exact basis thereof." On appeal, however, the United States Court of Appeals for the Ninth Circuit reversed, finding that the government had waived its right to enforce Treas. Reg. § 301.6402-2(b)(1) by engaging in a substantive examination of the Harpers' refund claims and issuing a final denial of those claims on their merits.

[3] "The effective administration of these modern complicated revenue measures inescapably leads Congress to authorize detailed administrative regulations by the Commissioner of Internal Revenue. He may insist upon full compliance with his regulations. It is hardly contended that the confusing series of petitioner's claims which we have summarized, whether singly or in conjunction, obeyed the regulations. For such default the Commissioner could have rejected the claims out of hand . . . ." Angelus Milling Co., 325 U.S. at 297.

jurisdiction to review the Service's denial. I.R.C. § 7422(a) ("No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed . . . until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof."); see Quarty v. United States, 170 F.3d 961, 972 (9th Cir. 1999).

A deficient claim does not provide the basis necessary to confer jurisdiction on a district court. United States v. Memphis Cotton Oil Co., 288 U.S. 62, 71 (1933) (citing United States v. Felt & Tarrant Mfg. Co., 283 U.S. 269, 272-73 (1931) ("A defective claim for refund will not provide the basis for a suit against the government when there has neither been a waiver by the Commissioner nor an amendment by the taxpayer."). The Service may reject a claim for refund "because it was too general or because it does not comply with formal requirements of the statute or regulations." United States v. Kales, 314 U.S. 186, 194 (1941). Courts have held that a rejection of a claim for failure to meet the procedural requirements by the Service disposes of the deficient claim, at which point the deficient claim may no longer be amended or perfected if the limitations period has expired. Tobin v. Tomlinson, 310 F.2d 648, 652 (5th Cir. 1962) ("the claim was not in existence after it was rejected and could not be amended after the expiration of the statute of limitations."); see PALA, Inc. Employees Profit Sharing Plan and Trust Agreement v. United States, 234 F.3d 873, 879 (5th Cir. 2000) ("If the IRS rejects the informal claim after the statutory period has expired, the claim cannot be amended."); Newport Indus. v. United States, 104 Ct. Cl. 38, 44 (1945) ("A refund claim, formal or informal, cannot be amended or perfected as a matter of right after it has been denied or rejected, and after the period of limitation has expired."); but see Mutual Assurance, Inc. v. United States, 56 F.3d 1353, 1356 (11th Cir. 1995) (finding that a refund claim did not cease to exist once the Service paid it because the amended claim asserted same ground for relief as original claim).

B. Court Decisions Regarding the Specificity Requirement and I.R.C. § 41 Claims

1. The Courts' Interpretation of the Specificity Requirement, Generally

a. Stoller

The United States Court of Appeals for the Fifth Circuit has held that meeting the specificity requirement of Treas. Reg. § 301.6402-2(b)(1) is a jurisdictional prerequisite to filing a suit for refund. Stoller v. United States, 444 F.2d 1391 (5th Cir. 1971).

In Stoller, the Service assessed an income tax deficiency for unreported income, the fraud penalty, and interest with respect to the taxpayers' 1964 and 1965 taxable years. The taxpayers paid the deficiencies, penalties, and interest, and filed a refund claim with the Service that was subsequently rejected. The only information included in the claim was "[t]he Commissioner of Internal Revenue erroneously determined that the taxpayers' profits from business totaled $16,935.40 in lieu of $1,859.40, which was the

taxpayer's correct profit from business." Stoller, 444 F.2d at 1393. The taxpayers sued for refund. However, the district court dismissed the case for lack of jurisdiction because the taxpayers did not file a claim for refund that met the requirements of I.R.C. § 7422 and Treas. Reg. § 301.6402-2 prior to filing suit. Noting that the taxpayers failed to specify the legal basis for the claim and failed to allege the facts to support their position, the Fifth Circuit recognized that "[t]he Commissioner could not have known these facts without an investigation, and there was nothing to put him on notice that a further investigation was needed." Id. The Fifth Circuit further explained,

> The Commissioner should not be left to his own devices in order to discover the precise nature of a taxpayer's claim and thus be placed in a position of having to hazard a guess . . . The Commissioner does not possess the time or resources to perform extensive investigations into the precise reasons and facts supporting every taxpayer's claim for refund. The need for investigation can be easily obviated by a taxpayer who takes the proper care in preparing his claim for refund.

Id. In finding that "[t]he Commissioner can take the claim at its face value and examine only those points to which his attention is necessarily directed," the Fifth Circuit rejected the taxpayers' argument that the Service was at least aware of the legal basis for the claim based upon certain statements in the revenue agent's report. Id.

b. *Other Cases*

Other cases that uphold and support the legal significance of the specificity requirement include Nick's Cigarette City, Inc. v. United States, 531 F.3d 516 (7th Cir. 2008) (finding that taxpayer's administrative claim for refund was not sufficiently detailed to satisfy the requirements of Treas. Reg. § 301.6402-2(b)(1), thereby depriving the court of subject matter jurisdiction over the claim); Quarty v. United States, 170 F.3d 961, 972 (9th Cir. 1999) (holding that compliance with the specificity requirement is a prerequisite to subject matter jurisdiction over a claim for refund); Boddie-Noell Enterprises, Inc. v. United States, 36 Fed. Cl. 722, 728 (1996) (holding that to the extent the taxpayer fails to meet the conditions specified in either I.R.C. § 7422 or Treas. Reg. § 301.6402–2, the United States, as sovereign, remains immune from suit); Beckwith Realty, Inc. v. United States, 896 F.2d 860, 863 (4th Cir. 1990) (rejecting taxpayer's argument that it was "required to do nothing more than file the required form in order to make an effective claim for refund"); Contractors Supply Corp. v. United States, 386 F. Supp. 907 (W.D. Va. 1975) (holding that compliance with the specificity requirement is a prerequisite to subject matter jurisdiction over a refund claim); see also Commissioner v. Lundy, 516 U.S. 235, 240-52 (1996) (noting that under Treas. Reg. § 301.6402-2(b)(1) a claim for refund in district court must state the grounds for refund with specificity).

In an I.R.C. § 41 research credit case, discussed in detail below, the District Court for the Southern District of California provided a summary on the current state of the law:

> Requiring the taxpayer to set forth in detail each ground upon which a special tax credit is claimed and facts sufficient to apprise the IRS of the exact basis for the credit affords the IRS "an opportunity to consider and dispose of the claim without the expense and time which would be consumed if every claim had to be litigated." Herrington v. United States, 416 F.2d 1029, 1032 (10th Cir. 1969). Under the specificity requirements of the regulations, the taxpayer must provide sufficient information to the IRS, so it can "make an intelligent administrative review of the claim[.]" Boyd v. United States, 762 F.2d 1369, 1372 (9th Cir. 1985). The taxpayer's burden is "to bring his asserted grounds of recovery to the attention of the Service and neither the Commissioner nor his agents can be expected to ferret out possible grounds for relief which a taxpayer might assert." Herrington, 416 F.2d at 1032.
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> Federal courts presume a case lies outside their limited jurisdiction, "and the burden of establishing the contrary rests upon the party asserting jurisdiction[.]" Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (citing McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 182-83 (1936)). See also Miller v. United States, 784 F.2d 728, 729-30 (6th Cir. 1986) (citing Data Disc, Inc. v. Systems Technology Associates, Inc., 557 F.2d 1280, 1285 (9th Cir. 1977)) ("The taxpayer has the burden of establishing the existence of federal court jurisdiction."); Choate v. United States, 218 F.R.D. 677, 678-79 (S.D. Cal. 2003) (same).

Harper v. United States, No. 3:18-cv-02110-DMS-LL, 2019 WL 1877185 (S.D. Cal. Apr. 25, 2019), rev'd, No. 19-55933, 2021 WL 732970 (9th Cir. Feb. 25, 2021). Although Harper was overruled on appeal based on the facts of the case, the law as stated in the district court opinion remains valid and is the standard by which claims are reviewed for validity.

2. The Courts' Interpretation of the Specificity Requirement in I.R.C. § 41 Research Credit Cases

a. *McFerrin*

United States v. McFerrin, 492 F. Supp. 2d 695 (S.D. Tex. 2007) offers relevant insight into the application of the specificity requirement to the I.R.C. § 41 research credit. In McFerrin, the government filed suit to recover an erroneous refund paid to Arthur and Dorothy McFerrin based on amended returns for three pass-through entities.

Id. Mr. McFerrin was the sole shareholder, by direct and indirect ownership, of three pass-through entities that filed amended returns for the 1999 tax year each claiming an I.R.C. § 41 research credit. The McFerrins filed a Form 1040X for the 1999 tax year claiming a refund attributable to the research credits passed-through to Mr. McFerrin. The Service paid the refund claim and the government filed suit to recover the erroneously paid refund. The parties filed motions for summary judgment. In its motion, the government argued, in part, that the McFerrins' claim for refund did not provide sufficient details underlying the refund claim.

The district court rejected the government's argument under Treas. Reg. § 301.6402-2(b)(1) that the pass-through entities' "putative basis for claiming the research credits is impermissibly vague." In its analysis of the applicable law, the district court explained that "the specificity requirement is met 'if the basic issue is evident from the record, and the IRS is aware of the nature of the claim.'" Id. at 705 (citing IA 80 Group, Inc. and Subsidiaries v. United States, 347 F.3d 1067, 1074 (8th Cir. 2003)). The district court found that the Form 1040X "explained the reason for [the McFerrins'] amendment and included a Form 6765" which reported the research credit that flowed through from the pass-through entities. Id. The district court further found that the "IRS was on notice of the nature of the claim, the entities claiming the credit, and the legal theory upon which the claim was founded." Id. at 705-706. The district court noted that the government provided no indication of what additional information was needed to satisfy the requirements of Treas. Reg. § 301.6402–2(b)(1). Id. at 706. Thus, the district court held that "[t]here is no question of material fact that the McFerrins supported their claim with sufficient detail under [Treas.] Reg. § 301.6402-2(b)(1)." Id.

b. Harper

A federal district court in California dismissed a refund suit for lack of subject-matter jurisdiction because the taxpayers' refund claims for the I.R.C. § 41 research credit did not meet the specificity requirement of Treas. Reg. § 301.6402–2(b)(1). Harper, 2019 WL 1877185, rev'd, 2021 WL 732970.

Jeffrey Harper and Katherine Harper were married and filed jointly.[4] Mr. Harper was the sole shareholder of Harper Construction Company ("HCC"), a Subchapter S Corporation.[5] The Harpers filed amended returns on behalf of HCC for taxable years 2008 and 2010 claiming tax credits for increasing research and development activities under I.R.C. § 41 and filed Forms 1040X to reflect the flow-through adjustments resulting from the claimed research credits.[6] The Harpers claimed a refund of $437,632 for 2008 and $388,325 for 2010.[7] Both the 2008 and 2010 amended returns explained

[4] Harper, 2019 WL 1877185, at *1.
[5] Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss Complaint at 4, Harper, No. 3:18-cv-02110-DMS-LL, 2019 WL 1877185.
[6] Id. at 4, 6-7.
[7] Id. at 15.

the research credit-related adjustment in general terms, noting only that the change was due to a claim for the research credit and the applicable amount.[8] The Forms 6765 were attached to HCC's amended returns.[9] The 2008 and 2010 refund claims were selected for examination and subsequently denied, whereafter the Harpers filed suit in district court.[10]

The government filed a motion to dismiss the complaint, alleging the Harpers' refund claims did not meet the requirements of Treas. Reg. § 301.6402-2(b)(1), and therefore, the court lacked subject-matter jurisdiction under I.R.C. § 7422(a).[11] Specifically, the government argued that the mere statement of entitlement to a refund of the claimed amount based on the I.R.C. § 41 research credit was factually insufficient.[12] The government alleged that, at a minimum, the Harpers' failure to identify the business components that formed the factual basis of their refund claims and failure to identify any employee that performed the allegedly qualified research activities was fatal to the validity of the claim.[13] Without that foundational information, the government was unable to determine whether the claim even had potential merit.[14] The absence of identified business components in the refund claims meant the government could not apply the four-part test under I.R.C. § 41(d)(1), as required under I.R.C. § 41(d)(2)(A).[15] The failure to identify any employee that performed the alleged research activities prevented the Service from determining, among other issues, whether 80 percent or more of the research activities for a business component constituted elements of a process of experimentation, one part of the four-part test under I.R.C. § 41(d)(1).[16]

The district court agreed with the government, finding that the Harpers' claims "identified the ground for these credits [but] failed to set forth facts sufficient to apprise the Commissioner of the exact basis thereof, as required by the relevant Treasury Regulation."[17] In this case, the court specifically found that because the "Plaintiffs' refund claims were based simply on their estimate of how much they increased their research activities in the years 2008 and 2010 relative to their estimate of the amount of their research activities in the years 1984-1988," they had failed to provide sufficient facts.[18] The court also said that because the refund claims did not "identify any specific

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[8] Id.
[9] Appellants' Opening Brief at 12-13, Harper, No. 19-55933, 2021 WL 732970
[10] Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss Complaint at 7-8, Harper, No. 3:18-cv-02110-DMS-LL, 2019 WL 1877185.
[11] Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss Complaint at 6-7, Harper, No. 3:18-cv-02110-DMS-LL, 2019 WL 1877185.
[12] Id. at 16.
[13] Id. at 17-19.
[14] Id.
[15] Id. at 17.
[16] Id. at 18-20. According to the government, the Harpers failed to provide these foundational facts even after an examination was conducted.
[17] Harper, 2019 WL 1877185, at *2.
[18] Id. at *3.

work [petitioners] performed in these periods nor appl[y] the statutory test to such work to determine whether, and what amount of, that work constituted qualified research, [petitioners] did not provide to the IRS any factual bases for their claims for refund."[19]

The Harpers then filed a motion for reconsideration, arguing the district court's jurisdiction over the refund claim was preconditioned on two requirements: (1) filing a claim with the Service on the proper Internal Revenue Service form, and (2) waiting six months after the filing of the form before filing suit.[20] The Harpers also argued that over 100,000 pages of documents were provided to the Service during the audit thereby perfecting any defect to the original claim filings and stated that the Service waived Treas. Reg. § 301.6402-2(b)(1) by examining the claim.[21] The district court denied the motion for reconsideration and dismissed the waiver issue as it was not raised in the Harpers' prior briefs or oral argument, with only a "passing reference" made in the motion for reconsideration.[22]

The Harpers appealed. On Feb. 25, 2021, the United States Court of Appeals for the Ninth Circuit overturned the district court's dismissal for lack of subject matter jurisdiction under I.R.C. § 7422 in an unpublished opinion.[23] In affirming that substantive satisfaction of Treas. Reg. § 301.6402-2(b)(1) is a jurisdictional prerequisite for federal courts to review the denial of a taxpayer's refund claim, the Ninth Circuit held that the government had waived its right to enforce Treas. Reg. § 301.6402-2(b)(1) by engaging in a substantive examination of the Harpers' refund claims and issuing a final denial of those claims on their merits.[24] Finding the waiver to be dispositive of the case, the Ninth Circuit did not opine on whether the taxpayers' attachment of a Form 6765 to the Form 1120X was sufficient to satisfy Treas. Reg. § 301.6402-2(b)(1) or whether the taxpayers had perfected an imperfect claim.[25]

Harper demonstrates that a substantive examination of an imperfect I.R.C. § 41 research credit refund claim may cause a court to conclude that the Service waived its right to enforce the specificity requirement of Treas. Reg. § 301.6402-2, particularly where the Service's disallowance is, or appears to be, based on the merits of the

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[19] Id.
[20] Memorandum of Points and Authorities in Support of Plaintiff's Motion for New Trial and Request for Oral Hearing at 11, 14, Harper, No. 3:18-cv-02110-DMS-LL, 2019 WL 1877185.
[21] Id. at 13, 19-20.
[22] Order Denying Plaintiffs' Motion for Reconsideration at 4-5, Harper, No. 3:18-cv-02110-DMS-LL, 2019 WL 4229755.
[23] Harper, 2021 WL 732970, at *1.
[24] Under "the waiver doctrine" the Service may also waive the requirement that a taxpayer file a formal refund claim if it treats an informal claim as though it were a formal one. Memphis Cotton Oil Co., 288 U.S. at 65; Angelus Milling Co., 325 U.S. at 297. The waiver can apply to any of the requirements in Treasury Regulations, including the specificity requirement. United States v. Garbutt Oil Co., 302 U.S. 528, 533–34 (1938).
[25] Id. at *2 n.2.

research credit refund claim. Waiver of the Service's right to enforce the specificity requirement is discussed further, below.[26]

3. Current State of the Applicability of the Treasury Regulation in I.R.C. § 41 Research Credit Cases

While courts have routinely upheld the specificity requirement generally, and to a limited degree in I.R.C. § 41 research credit cases, it is unclear how a court may apply the specificity requirement in an I.R.C. § 41 research credit case based on a unique set of facts. Although the McFerrin court held adversely to the government, that case is readily distinguishable from the majority of refund cases the government litigates.[27]

First, McFerrin was an erroneous refund suit initiated by the government, rather than a refund suit initiated by a taxpayer. As such, the burden was on the government to prove the taxpayer was not entitled to the refund in the amount received, rather than on the taxpayer to prove his entitlement to a refund. Second, McFerrin was decided by a motion for summary judgment (on the merits) rather than a motion to dismiss based on claim validity. The standard for granting a motion for summary judgment required the government, as the moving party, to show there was no material issue of fact in dispute. While the district court in McFerrin emphasized the fact that the government had notice of the nature of the claim, the entities claiming the credit, and the legal theory for the refund claim, crucially, it noted that the government "provide[d] no indication of what additional information it need[ed] to satisfy the requirements of [Treas.] Reg. § 301.6402-2(b)(1)." McFerrin, 492 F. Supp. 2d at 706.

C. Basic Requirements for the I.R.C. § 41 Research Credit

The research credit (as provided by I.R.C. § 41) is a complex area of law involving the application of a four-part test, numerous exclusions, and significant computation and calculation elements to each research activity claimed by a taxpayer in any given tax year. See Union Carbide Corp. and Subsidiaries v. Commissioner, T.C. Memo. 2009-50 (2009), aff'd, 697 F.3d 104 (2nd Cir. 2012). "To be eligible for a credit under section 41(a)(1) a taxpayer must show that it has performed "qualified research" during the years at issue." Union Carbide, T.C. Memo. 2009-50 at *77 (quoting I.R.C. § 41(a)(1)(A), (b)(2)). Most of those legal issues are not discussed here. This memorandum is limited to the most basic and fundamental requirements for a taxpayer to qualify for an I.R.C. § 41 research credit and why these are the minimum facts that

[26] See also Intermountain Electronics, Inc. v. United States, No. 2:20-cv-00501-JNP (D. UT, July 16, 2021) (finding that the government had waived the formal claim requirements by conducting a five year examination on the merits, but granting without prejudice the government's motion to dismiss for failure to state a claim).

[27] The Service and Counsel are aware of the opinion in the United States District Court for the District of Utah in Premier Tech, Inc. v. United States, No. 2:20-CV-890-TS-CMR, slip op. at *2-*3, that was issued on July 15, 2021. The Service and Counsel are currently evaluating the opinion.

must be included in a refund claim in order for the claim to be valid under the specificity requirement.

Section 41(a)(1) of the Internal Revenue Code allows taxpayers a credit against income taxes[28] that is a portion of the increased expenses incurred and attributable to qualified research activities (QRAs). To be considered a QRA, I.R.C. § 41 requires the analysis to be broken down by each of the taxpayer's identified business components. Each business component must individually meet a statutory four-part test (each containing sub-elements). I.R.C. § 41(d)(1) and (2). Further, each business component must not be subject to any exclusion under I.R.C. § 41(d)(3)(B) or (d)(4). Therefore, identification of all of the business components to which the I.R.C. § 41 research credit relates is a basic requirement and is why this information must be included in a refund claim for the claim to meet the specificity requirement.

Once a business component is identified, it is a basic truism that to have a research credit, the taxpayer must engage in research. To determine whether there is research that meets the definitions of that term under I.R.C. § 41, identifying who performed the research and the information that each individual who performed the research sought to discover is essential. Without this specificity in the claim for refund, it is impossible to make a determination whether the taxpayer engaged in QRAs for the claim year. Thus, this information must be included in a refund claim for the claim to meet the specificity requirement.

Certain expenses attributed to qualified research activities are qualified research expenses (QREs). I.R.C. § 41(b). Generally, a taxpayer may claim a credit that is 20% of the excess of the sum of the total wages paid or incurred to an employee for engaging in (or directly supervising) qualified research activities, the cost of supplies used in qualified research activities, and 65% of any amounts paid to any non-employee to perform qualified research over "the base amount."[29] I.R.C. § 41(a), (b). The credit must be properly computed, including only allowable expenses as set forth in I.R.C. § 41. Calculating total qualified employee wage expenses, qualified supply expenses, and qualified contract expenses are required steps for a taxpayer to determine their QREs and are itemized on Form 6765. Without these figures it is impossible to calculate the I.R.C. § 41 research credit and, therefore, this information must be included in a refund claim to meet the specificity requirement.

To further explain why these criteria must be included with a claim as the minimum standards to meet the sufficiency requirement, this memorandum addresses only the four-part test and basic computational issues. This memorandum does not address the many other requirements of I.R.C. § 41, including the numerous exclusions

[28] Beginning in 2016, certain taxpayers can apply their research credit against payroll tax (see I.R.C. § 41(h)) or alternative minimum tax (see I.R.C. § 38(c)(4)).

[29] The base amount, not otherwise explained in detail for this memorandum, is defined in I.R.C. § 41(c). Taxpayers must demonstrate that the QREs claimed for the tax year at issue exceeds the base amount in order to claim any I.R.C. § 41 research credit.

and other details that would ultimately be the subject of an examination of an I.R.C. § 41 research credit claim.

1. The Four-Part Test

Research activities are qualified research under I.R.C. § 41 if they satisfy the four-part test: the I.R.C. § 174 test, the technological information test, the business component test, and the process of experimentation test. I.R.C. § 41(d)(1).[30] However, the activity is not qualified research if it is excluded under any one of eight exclusions. I.R.C. § 41(d)(4).

To satisfy the I.R.C. § 174 test, a taxpayer must show that the expenditures connected to the research activities were "incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense." Treas. Reg. § 1.174-2(a)(1). Section 1.174-2(a)(1) of the Treasury Regulations defines "research and development costs in the experimental or laboratory sense" as "[expenses] for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product." This Treasury Regulation further explains,

> Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the product or the appropriate design of the product. Whether expenditures qualify as research or experimental expenditures depends on the nature of the activity to which the expenditures relate, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents.

Id.

The technological information test requires the research be undertaken to discover information that is "technological in nature." I.R.C. § 41(d)(1)(B)(i). Information is technological in nature if it "fundamentally relies on principles of the physical or biological sciences, engineering, or computer science." Union Carbide, T.C. Memo. 2009-50 at *79 (citing to H.R. Rep. No. 99–841, at II-71 – II-72 (1986) (Conf. Rep.)).

The business component test requires that the application of the information discovered as a result of the research activity is "intended to be useful in the development of a new or improved business component of the taxpayer." I.R.C. § 41(d)(1)(B)(ii). A business component is defined as any product, process, computer

[30] This memorandum applies only in part to taxpayers claiming an I.R.C. § 41 research credit for the development of internal use software. Research with respect to software that is developed by (or for the benefit of) the taxpayer primarily for the taxpayer's internal use is subject to additional tests not described here. See Treas. Reg. § 1.41-4(c)(6).

software technique, formula, or invention to be held for sale, lease, or license or to be used by the taxpayer in its trade or business. I.R.C. § 41(d)(2)(B).

The process of experimentation test requires that substantially all of the research activities must constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality of the business component. I.R.C. § 41(d)(1)(C), (d)(3)(A); Treas. Reg. § 1.41-4(a)(5). The "substantially all" requirement is met "only if 80 percent or more of a taxpayer's research activities measured on a cost or other consistently applied reasonable basis . . . constitute elements of a process of experimentation." Treas. Reg. § 1.41-4(a)(6). A process of experimentation "is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities." Treas. Reg. § 1.41-4(a)(5)(i). Section 1.41-4(a)(5)(i) of the Treasury Regulations further explains:

> A process of experimentation must fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involves the identification of uncertainty concerning the development or improvement of a business component, the identification of one or more alternatives intended to eliminate that uncertainty, and the identification and the conduct of a process of evaluating the alternatives (through, for example, modeling, simulation, or a systematic trial and error methodology). A process of experimentation must be an evaluative process and generally should be capable of evaluating more than one alternative.

The I.R.C. § 174 test, the technological information test, the business component test, and the process of experimentation test are applied to each business component separately. I.R.C. § 41(d)(2)(A). If the discrete business component fails any part of the four-part test, the "shrinking-back rule" provides the tests are then applied "at the most significant subset of elements of the product, process, computer software, technique, formula, or invention to be held for sale, lease, or license . . . until either a subset of elements of the product that satisfies the requirements is reached, or the most basic element of the product is reached and such element fails to satisfy the test." Treas. Reg. § 1.41-4(b)(2).

2. Expenses Included in the I.R.C. § 41 Research Credit Computation

Assuming research activities are qualified (including not being subject to any exclusions), the taxpayer must then engage in a detailed determination of what expenses are includible in the I.R.C. § 41 research credit computation and perform annual computations to determine the amount of credit. QREs are the sum of in-house research expenses and qualified contract research expenses. I.R.C. § 41(b). "In-house research expenses" include wages paid or incurred to an employee for qualified

services performed by such employee, any amount paid or incurred for supplies used in the conduct of qualified research, and under regulations prescribed by the Secretary, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research. I.R.C. § 41(b)(2)(A). "Qualified services" means services consisting of engaging in qualified research or engaging in the direct supervision or direct support of research activities which constitute qualified research. I.R.C. § 41(b)(2)(B). "Supplies" means any tangible property other than land or improvements to land, and property of a character subject to the allowance for depreciation. I.R.C. § 41(b)(2)(C).

3. Computational Issues

Once a taxpayer has computed allowable expenses for its business components, a taxpayer must compute the allowable credit for the applicable tax year. This is done by comparing the current year expenses to a "base amount" (research expenses of a "base period"). I.R.C. § 41(a)(1) and (c). The base period may vary depending on elections the taxpayer makes and the date the entity began engaging in research activities. I.R.C. §§ 41(c) and 280C.

D. Requirements for a Valid Refund Claim that Includes the I.R.C. § 41 Research Credit

1. Minimum Facts Sufficient to Apprise the Service of an I.R.C. § 41 Research Credit Refund Claim

In determining what minimum facts are necessary and sufficient to apprise the Service of the basis for a refund claim that includes the I.R.C. § 41 research credit, there are at least five essential pieces of information that must be provided by a taxpayer for the Service to adequately consider whether the refund claim can be paid or must be examined further. As noted above, these foundational criteria allow only for the Service to screen a refund claim for potential validity or audit necessity; the criteria are not conclusive proof of a taxpayer's entitlement to the I.R.C. § 41 research credit. To constitute a valid I.R.C. § 41 research credit refund claim, a taxpayer must, at a minimum:

- Identify all the business components to which the I.R.C. § 41 research credit claim related for that year.

- For each business component:
  - Identify all research activities performed;
  - Identify all individuals who performed each research activity; and
  - Identify all the information each individual sought to discover.

- Provide the total qualified employee wage expenses, total qualified supply

expenses, and total qualified contract research expenses for the claim year (this may be done using Form 6765, Credit for Increasing Research Activities).

A taxpayer claiming an I.R.C. § 41 research credit must identify all the business components involved in the claim because I.R.C. § 41(d)(2)(A) requires that each part of the four-part test be applied separately to each business component. Indeed, research activities (and associated expenses) are only "qualified" under I.R.C. § 41 if the application of the information is "intended to be useful in the development of a new or improved business component of the taxpayer." I.R.C. § 41(d)(1)(B)(ii). Therefore, the identification of each business component at issue is the most basic fact underpinning a taxpayer's I.R.C. § 41 research credit claim.

A taxpayer claiming an I.R.C. § 41 research credit must also identify, for each business component, all research performed, all individuals who performed each research activity, and all the information each individual sought to discover for each business component involved in the claim. Like business components, the research activities and the information discovered (i.e., the results of the research) are both integral to the requirements of the I.R.C. § 174 test and the process of experimentation test under I.R.C. § 41(d)(1). The I.R.C. § 174 test requires a taxpayer to demonstrate that the claimed expenditures were incurred in connection with "research and development costs . . . intended to discover information that would eliminate uncertainty concerning the development or improvement of a product . . . ." Treas. Reg. § 1.174-2(a)(1). "Whether expenditures qualify as research or experimental expenditures depends on the nature of the activity to which the expenditures relate." Id.

The process of experimentation test requires that 80% or more of the taxpayer's research activities constitute elements of a process of experimentation. I.R.C. § 41(d)(1)(C); Treas. Reg. § 1.41-4(a)(6). "A process of experimentation must fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involves the identification of uncertainty concerning the development or improvement of a business component, the identification of one or more alternatives intended to eliminate that uncertainty, and the identification and the conduct of a process of evaluating the alternatives. . . ." Treas. Reg. § 1.41-4(a)(5)(i). The elements necessary to satisfy both tests focus on the nature and amount of the research activity itself (i.e., how the research is conducted). The information the research activities sought to discover is directly related to the requirement under both the I.R.C. § 174 test and the process of experimentation test that an uncertainty exists before the research activities start, and the information discovered is used to develop or improve a product or process that relates to a business component.

As noted above, the I.R.C. § 41 research credit is computed using the expenses incurred and attributable to qualified research activities. Thus, a taxpayer must engage in qualified research to be eligible to claim an I.R.C. § 41 research credit. The alleged research activities are the focus of two of the four tests every business component must

meet for a taxpayer to be entitled to an I.R.C. § 41 research credit. The elements necessary to satisfy both the I.R.C. § 174 test and the process of experimentation test under I.R.C. § 41(d)(1) focus on the nature of the research activity itself (i.e., whether the research involves principles of the physical or biological sciences, engineering, or computer science) and how the research is conducted (i.e., in the experimental or laboratory sense where eighty percent (80%) or more of the research activities constitute elements of a process of experimentation). If a taxpayer fails to satisfy either the I.R.C. § 174 test or the process of experimentation test under I.R.C. § 41(d)(1) for any business component, the taxpayer is not entitled to an I.R.C. § 41 research credit for any expenses associated with that business component. Thus, identifying the research activities performed is a necessary and fundamental component of any I.R.C. § 41 research credit claim and such information is needed to determine whether the alleged research activities meet the requirements of the I.R.C. § 174 test and the process of experimentation test.

Research activities are performed by individuals. A taxpayer's I.R.C. § 41 research credit claim for in-house research expenses is limited to "(i) any wages paid or incurred to an employee for qualified services performed by such employee" and "(ii) any amount paid or incurred for supplies used in the conduct of qualified research." I.R.C. § 41(b)(2)(A)(i) and (ii). The Tax Court held that employee time spent directly supervising research activities or employee time spent directly supporting research activities is not research under I.R.C. § 41(b)(2)(B) even if the wages paid to those individuals could be treated as a qualified research expense. Little Sandy Coal v. Commissioner, T.C. Memo. 2021-15, *37, *45 (2021). If a taxpayer cannot demonstrate that 80% or more of the taxpayer's research activities performed by individuals constitute elements of a process of experimentation as required under I.R.C. § 41(d)(1)(C), the taxpayer is not entitled to an I.R.C. § 41 research credit for any expenses related to that business component. Thus, the identities of the individuals who performed the alleged research activities for each business component are necessary to determine whether any single individuals' time could be counted towards satisfying the process of experimentation test required under I.R.C. § 41(d)(1)(C).

The information that the individuals who performed the research activities sought to discover is directly related to the requirements under the I.R.C. § 174 test, the technological information test, and the process of experimentation test. As explained above, the I.R.C. § 174 test requires that the research activities are performed with the intent to discover information that would eliminate uncertainty concerning the development or improvement of a product, such as the capability or method for developing or improving the product or the appropriate design of the product. Treas. Reg. § 1.174-2(a)(1). The technological information test requires that the research is undertaken to discover information that fundamentally relies on principles of the physical or biological sciences, engineering, or computer science. The process of experimentation test requires that substantially all of the research activities must constitute elements of a process of experimentation that relates to a new or improved

function, performance, reliability, or quality of the business component. I.R.C. § 41(d)(1)(C), (d)(3)(A); Treas. Reg. § 1.41-4(a)(5).

Section 41(d)(4) of the Internal Revenue Code excludes from the definition of "qualified research" all research done for marketing. Section 41(d)(3)(B) of the Internal Revenue Code prohibits research conducted for the purpose of determining style, taste, cosmetic, or seasonal design factors. Thus, information sought by the individuals who performed the alleged research activities for each business component is necessary to determine that the alleged uncertainty existed before the research activities started and whether the information discovered is a type of information permitted under the I.R.C. § 174 test, the technological information test, and the process of experimentation test.

Finally, a taxpayer claiming an I.R.C. § 41 research credit must identify the total qualified research expenses for the claim year separately itemized for employee wages, supplies, and contract expenses. This may be done with a properly completed Form 6765 attached to the claim seeking the refund.[31] The total allowable expenses for the business components are used, in part, to determine the allowable I.R.C. § 41 research credit for the claim year. These figures are a necessary element to determining the amount of I.R.C. § 41 research credit a taxpayer may be entitled to receive.

2. The Method for Providing Sufficient Facts to the Service Under Treas. Reg. § 301.6402-2(b)(1)

In submitting an I.R.C. § 41 research credit claim, the taxpayer must identify the grounds and the specific facts listed above in support of the taxpayer's claim. Section 301.6402-2 of the Treasury Regulations provides that the statement of the grounds and facts must be verified by a written declaration that the statement is made under the penalties of perjury. The taxpayer's signature on the amended return constitutes the declaration under the penalties of perjury for what is contained in the claim and what is attached to it (incorporated by reference). Treas. Reg. § 301.6402-2(b)(1); see also Mattson v. United States, 153 Fed. Cl. 476, 483-484, (2021). We found no authority establishing that items provided to the Service subsequent to the filing of the claim are

[31] Further support that these facts are required can be found in district court discovery disputes in research credit cases. In each case, the court determined that the responses requested by the government involved facts that were essential to a determination on the merits. See, e.g., United States v. Quebe, 321 F.R.D. 303, 306-309, 313 (S.D. Ohio, 2017) (sanctioning taxpayers for failing to comply with the court's order requiring them to identify the business components comprising their claim, name the uncertainties for each of the projects at issue, and specifically describe the alleged research that was performed by each employee); CRA Holdings US, Inc. v. United States, No. 1:15-cv-00239-EAW-LGF, slip op. at *2-*3, *9 (W.D.N.Y dismissed Sept. 20, 2019) (ordering the taxpayer to answer the government's interrogatories to identify, for each business component at issue, each employee the taxpayer alleged performed qualified research activities, the specific activities each employee performed, the dates the activities were performed, the amount of time spent by each employee performing such activities, and the amount of alleged qualified research expenses associated with the activities, noting that whether the taxpayers' wage expenses associated with the projects at issue are for "qualified services" under I.R.C. § 41 is "essential" to the taxpayer's claim).

automatically incorporated by reference into the originally submitted claim. Therefore, in the absence of direct guidance on subsequent submissions and consistent with Treas. Reg. § 301.6402-2(b)(1), it is our view that any subsequent submissions of facts and statements must be accompanied by another written declaration regarding the accuracy of the information provided and signed under the penalties of perjury.

Taxpayers are not required to provide supporting documentation with the claim, only a signed declaration attesting to the accuracy of the facts contained in the statement is required.[32] As mentioned above, Treas. Reg. § 301.6402-2(b)(1) requires taxpayers to identify "in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof." Identification of the legal grounds and factual basis for a taxpayer's credit claim is not conclusive proof that the taxpayer is entitled to the I.R.C. § 41 research credit. Indeed, the Service may prefer that taxpayers do not provide supporting documentation unless and until asked to do so during an examination, at which time, taxpayers must provide documentation to support their credit claim as set forth in I.R.C. § 6001 and the accompanying Treasury Regulations.

However, if a taxpayer voluntarily provides documents with the claim, the taxpayer must specifically identify where in the documents the facts responsive to each of the five minimum facts listed above can be found. The Service has no affirmative obligation to sort through a taxpayer's records. The Supreme Court has cautioned that "it is not enough that somewhere under the Commissioner's roof is the information which might enable him to pass on a claim for refund." Angelus Milling, 325 U.S. at 299, see also Kikalos v. United States, 479 F.3d 522, 526 (7th Cir. 2007) (rejecting the taxpayers' argument that the Service had sufficient knowledge of the refund claim simply because it possessed more than 5,000 documents from the audit of the same issue); see also Patterson v. Commissioner, T.C. Memo. 1979-362 (1979) (disallowing deductions when "[p]etitioner has chosen to rely on what may be termed the 'shoebox method' of attaching photocopies of numerous cash register tapes and of similar bits of paper to his returns, without making any effort on the returns or on brief, and only a slight effort in oral testimony, to link any item to a deductible trade or business expense transaction").

If the taxpayer has prepared a credit study, the taxpayer does not need to attach it to the taxpayer's claim. The taxpayer may provide the requested facts in a written statement of any kind, signed under the penalties of perjury, as discussed above. However, if the taxpayer does attach a credit study, the taxpayer must identify the specific facts contained in the study that the taxpayer contends meet the five foundational information requirements stated above.

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[32] In some instances, a taxpayer may file a purported claim for refund without meeting the requirements of Treas. Reg. § 301.6402-2. A refund suit will not be barred by the statute of limitations if the taxpayer perfects the claim before filing suit, or before the Service rejects the informal claim. United States v. Kales, 314 U.S. 186 (1941).

E. Statute of Limitations Considerations

Section 6511 of the Internal Revenue Code governs the period of limitations for filing a credit or refund claim. That Code section provides in general that if a return was filed, a claim for refund must be filed within three years from the date the return was filed, or two years from the time the tax was paid, whichever period expires later.[33] I.R.C. § 6511(a). If a taxpayer does not file a claim for refund within this period, then "no credit or refund shall be allowed or made" after the period expires. I.R.C. § 6511(b)(1). Section 6511(b)(2) of the Internal Revenue Code places a limit on the amount of refund that a taxpayer may recover. If the taxpayer has filed a tax return and files a valid claim for credit or refund within three years of the filing of the return, in general the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return. I.R.C. § 6511(b)(2)(A). If the taxpayer has filed a return but files a claim for credit or refund more than three years after the return was filed, the credit or refund shall not exceed the portion of the tax paid within the two years immediately preceding filing of the claim. I.R.C. § 6511(b)(2)(B). If no claim for refund is filed, the amount of the credit or refund allowed shall not exceed the amount which would have been allowable if a claim had been filed on the date the credit or refund is allowed. I.R.C. § 6511(b)(2)(C). Thus, I.R.C. § 6511 provides two important limitations for a refund claim – it establishes the time periods for the claim to be filed, and it limits the amount of the refund that may be allowed.

Application of certain judicial doctrines, however, could result in the taxpayer satisfying the refund limitations period without filing a valid, formal claim meeting the requirements described above before the limitations period expires. For example, if the taxpayer perfects a deficient claim after the limitations period has expired, but before the Service has acted on it (e.g., rejecting it), the claim may be considered filed on the date of the deficient claim. PALA, Inc. Employees Profit Sharing Plan and Trust Agreement v. United States, 234 F.3d 873 (5th Cir. 2000); see United States v. Andrews, 302 U.S. 517, 524 (1938); United States v. Memphis Cotton Oil Co., 288 U.S. 62, 70–71, (1933); see also Pennoni v. United States, 86 Fed. Cl. 351 (2009). Under what the Computervision court termed "the informal claim doctrine" and "the general claim doctrine," a taxpayer will have a valid refund claim if the taxpayer files a deficient claim before the I.R.C. § 6511 statute of limitations expires, but perfects the claim before the Service rejects the claim, even if the perfection occurs after the limitations period for filing a refund claim has expired. Computervision Corp., 445 F.3d at 1364.

Further, under "the waiver doctrine" the Service may waive the requirement that a taxpayer file a formal refund claim if it treats an informal claim as though it were a formal one. Memphis Cotton Oil Co., 288 U.S. at 65; Angelus Milling Co., 325 U.S. at

[33] The limitations period for filing a refund claim, and the amounts available to be refunded, is extended when the taxpayer has agreed to extend the period for assessing the tax liability under I.R.C. § 6501(c)(4). I.R.C. § 6511(c).

297. Courts have found the Service waived the requirement to file a formal claim when (1) there is clear evidence that the Service understood that a claim was made, although it was not made as a formal claim, and (2) it is unmistakable the Service examined the claim without requiring perfection. Martti v. United States, 121 Fed. Cl. 87 (2015); Blue v. United States, 108 Fed. Cl. 61 (2012); Harper, 2021 WL 732970. For the waiver doctrine to apply, the Service must consider the taxpayer's informal claim before the limitations period expires. Computervision Corp., 445 F.3d at 1368.

Thus, there is a risk that a court could find a deficient claim for an I.R.C. § 41 research credit made prior to the expiration of the limitations period defined in I.R.C. § 6511 was nonetheless timely filed by application of the informal claim doctrine. A taxpayer would need to perfect that deficient claim before it could bring a refund suit unless the Service waived the formal requirements by considering the claim.

Conclusion

As detailed above, case law regarding the specificity requirement under Treas. Reg. § 301.6402-2(b)(1) for claims involving the I.R.C. § 41 research credit is limited, fact-specific, and still developing, thereby illustrating and supporting the need for the Service to specify the requirements of a sufficient claim. To be considered sufficient, a refund claim for an I.R.C. § 41 research credit must, at a minimum:

- Identify all the business components to which the I.R.C. § 41 research credit claim relates for that year.

- For each business component:
  - identify all research activities performed;
  - identify all individuals who performed each research activity; and
  - identify all the information each individual sought to discover.

- Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year (this may be done using Form 6765, Credit for Increasing Research Activities).

This information must be submitted when the refund claim is filed and be provided with a declaration signed under the penalties of perjury verifying that the facts provided are accurate. Otherwise, the refund claim should be rejected as deficient.

Rejecting a deficient refund claim before initiating an audit (or otherwise actively considering the refund claim on its merits) is recommended and should eliminate the likelihood that a court will find the Service waived the specificity requirement under Treas. Reg. § 301.6402–2(b)(1). Rejecting a deficient refund claim may preclude a taxpayer from amending or perfecting their refund claim if the refund claim failed to follow procedural requirements and the statute of limitations to file a new refund claim

has expired. See Memphis Cotton Oil Co., 288 U.S. at 71; Mobil Corp. v. United States, 52 Fed. Cl. 327 (2002); Sierra Pac. Res. v. United States, 56 Fed. Cl. 366, 376-377 (2002).

Please call Kathryn Meyer at (503) 265-3599 or Patricia Davis at (312) 368-8775 if you have any further questions.