



# TaxNewsFlash

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## IRS sets forth required information for valid research credit claim for refund (Chief Counsel legal advice memo)

The IRS today publicly released a legal advice memorandum\* (from the Office of the Chief Counsel) that sets forth the information that taxpayers will be required to include for a valid claim for a refund relating to the research credit.

Existing Treasury regulations require that for a refund claim to be valid, it must set forth sufficient facts to apprise the IRS of the basis of the claim. According to a related IRS release—[IR-2021-203](#) (October 15, 2021)—today's legal advice memorandum will improve tax administration by providing clearer instructions for eligible taxpayers to claim the credit and reducing the number of disputes over such claims.

Read [20214101F](#) [PDF 248 KB] (released October 15, 2021, and dated September 17, 2021)

\*Legal advice memoranda are signed by executives in the National Office of the Office of Chief Counsel and issued to Internal Revenue Service personnel who are national program executives and managers. The memos are issued to assist IRS personnel in administering their programs by providing authoritative legal opinions on certain matters, such as industry-wide issues. The memos cannot be used or cited as precedent.

The IRS release, IR-2021-203, explains that:

- Each year, the IRS receives thousands of research and experimentation (R&E) claims for credits in the hundreds of millions of dollars from corporations, businesses, and individual taxpayers.
- Claims for research credit under section 41 are currently examined in a substantial number of cases and consume significant resources for both the IRS and taxpayers.

- The legal advice released today is the result of ongoing efforts to manage research credit issues and resources in the most effective and efficient manner. By requiring taxpayers to provide the listed information, the IRS will be better able to determine if a research credit claim for refund is to be paid immediately or whether further review is needed.

Specifically, the legal advice memo provides that for a section 41 research credit claim for refund to be considered a valid claim, at the time the refund claim is filed, taxpayers must:

- Identify all the business components to which the section 41 research credit claim relates for that year.
- Identify for each business component all research activities performed and name the individuals who performed each research activity, as well as 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

The IRS release states that a grace period will be provided until January 10, 2022, before the IRS requires the inclusion of this information with timely filed section 41 research credit refund claims. After this date, there will be a one-year transition period during which taxpayers will have 30 days to perfect a research credit claim for refund prior to the final determination by the IRS on the claim.

Further details will be forthcoming, but the IRS stated that taxpayers may begin immediately providing this information.

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