

students' SEVIS record by notating in the remarks box of their electronic record: "Special Student Relief work authorization granted until December 31, 2011." If a reduced course load is also authorized due to employment, the responsible officer should also record this fact in the SEVIS record comment box as: "reduced course load authorized."

The Department's suspension of the application of the requirements set forth in 22 CFR 62.23(e), 22 CFR 62.23(g) and 22 CFR 62.23(h) for these identified students will remain in effect until December 31, 2011.

Dated: June 6, 2011.

**Joseph A. Erel,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2011-14499 Filed 6-9-11; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9528]

RIN 1545-BH32

#### Alternative Simplified Credit Under Section 41(c)(5)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to the election and calculation of the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code (Code). The final regulations affect certain taxpayers claiming the credit under section 41. These final regulations implement changes to the credit for increasing research activities under section 41 made by the Tax Relief and Health Care Act of 2006.

**DATES:** *Effective Date:* These regulations are effective on June 9, 2011.

*Applicability Date:* For dates of applicability, see §§ 1.41-6(j)(3), 1.41-8(b)(5), and 1.41-9(d).

**FOR FURTHER INFORMATION CONTACT:** David Selig (202) 622-3040 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 17, 2008, the Treasury Department and the IRS published final and temporary regulations (TD 9401) in

the **Federal Register** (73 FR 34185) relating to the election and calculation of the alternative simplified credit (ASC) under section 41(c)(5). The ASC was added by the Tax Relief and Health Care Act of 2006 (Public Law 109-432, 120 Stat. 2922, December 20, 2006). A notice of proposed rulemaking cross-referencing the temporary regulations was also published in the same issue of the **Federal Register** (73 FR 34237). Written and electronic comments responding to these regulations (collectively, the 2008 regulations) were received and a public hearing was held on the 2008 regulations on September 25, 2008. After consideration of the comments received and the statements made at the public hearing, the 2008 regulations are adopted as revised by this Treasury decision.

#### Summary of Comments and Explanation of Changes

The 2008 regulations were issued primarily to provide guidance on the election and calculation of the ASC. Section 1.41-9T(b) of the 2008 regulations provide that an election to make or revoke the provisions of the ASC under section 41(c)(5) must be made on a timely filed (including extensions) original return for the taxable year and may not be made on an amended return. Before the issuance of the 2008 regulations, identical election procedures existed for the alternative incremental research credit (AIRC) under § 1.41-8. The 2008 regulations extended these election procedures to the ASC under § 1.41-9T. The 2008 regulations also provided that extensions of time to make or revoke the election for both the AIRC and the ASC will not be granted under § 301.9100-3. In the case of the AIRC, the 2008 regulations are of limited duration as section 41(h)(2) provides that no election under section 41(c)(4) shall apply to taxable years beginning after December 31, 2008.

Commenters stated that these provisions of the 2008 regulations are restrictive and asked that they be excluded from the final regulations.

The Treasury Department and the IRS believe that both tax administration and fairness are best served by adopting the same election procedures for the ASC that are used for the AIRC under § 1.41-8. A taxpayer may make or revoke an election each taxable year by obtaining the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to make or revoke an election if the taxpayer completes the portion of Form 6765, "Credit for Increasing Research Activities," (or

successor form) relating to the credit determined under section 41(a)(1), the AIRC, or the ASC, as appropriate, and attaches the completed form to the taxpayer's timely filed (including extensions) original return for the year to which it applies. As is the case with a revocation of an AIRC election under § 1.41-8, an ASC election under section 41(c)(5) may not be made or revoked on an amended return. Consistent with this position, the final regulations also provide that an extension of time to make or revoke an election under sections 41(c)(4) and 41(c)(5) will not be granted under § 301.9100-3.

One commenter suggested changing the ASC short taxable year rules in the 2008 regulations to prorate short years by the number of days in the year instead of the number of months in the year. The Treasury Department and the IRS agree that calculating the ASC for short taxable years on a daily rather than a monthly basis provides a more accurate calculation and removes uncertainty as to whether and how to include a partial month in making the monthly calculation. Accordingly, the final regulations generally require that short taxable years be prorated by the number of days in the year instead of the number of months in the year for taxable years ending after June 9, 2011. Recognizing that some taxpayers may have already filed returns using a monthly calculation for a short taxable year, the final regulations also provide that returns filed for taxable years ending within a specified time period may, at the taxpayer's option, be amended to reflect the daily calculation.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. 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. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities may make an election under these regulations, any economic impact is minimal. This certification is based upon the fact that the information required by these regulations is already required to be maintained under the statute and current regulations. These regulations add little or no new burden to the existing requirements. Additionally, an election under these regulations generally will simplify the calculation of the credit and may result

in a benefit to the taxpayer. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. 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 its impact on small business.

#### Drafting Information

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

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of 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 is amended by removing § 1.41–0T to read in part as follows:

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

Section 1.41–8 also issued under 26 U.S.C. 41(c)(4)(B). Section 1.41–9 also issued under 26 U.S.C. 41(c)(5)(C). \* \* \*

■ **Par. 2.** Section 1.41–0 is amended as follows:

■ 1. Under § 1.41–6, the entries for paragraphs (j) introductory text and (j)(3) are revised.

■ 2. Under § 1.41–8, the section heading is revised and entries for paragraphs (b)(4)(i) and (b)(4)(ii) are added.

■ 3. Revising the entry for § 1.41–9.

The revisions and additions read as follows:

#### § 1.41–0 Table of contents.

\* \* \* \* \*

#### § 1.41–6 Aggregation of expenditures.

\* \* \* \* \*

(j) Effective/applicability dates.

\* \* \* \* \*

(3) Taxable years ending after June 9, 2011.

\* \* \* \* \*

#### § 1.41–8 Alternative incremental credit applicable for taxable years beginning on or before December 31, 2008.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) In general.

(ii) Designated member.

\* \* \* \* \*

#### § 1.41–9 Alternative simplified credit.

(a) Determination of credit.

(b) Election.

(1) In general.

(2) Time and manner of election.

(3) Revocation.

(4) Special rules for controlled groups.

(i) In general.

(ii) Designated member.

(c) Special rules.

(1) Qualified research expenditures (QREs) required in all years.

(2) Section 41(c)(6) applicability.

(3) Short taxable years.

(i) General rule.

(ii) Limited exception.

(4) Controlled groups.

(d) Effective/applicability dates.

#### § 1.41–0T [Removed]

■ **Par. 3.** Section 1.41–0T is removed.

■ **Par. 4.** Section 1.41–6 is amended as follows:

■ 1. Paragraphs (b)(1), (c)(2), (e) introductory text, paragraph (j) introductory text heading, and (j)(3) are revised.

■ 2. Adding new *Example 7* to paragraph (e).

The revisions and addition read as follows:

#### § 1.41–6 Aggregation of expenditures.

\* \* \* \* \*

(b) *Computation of the group credit—*

(1) *In general.* All members of a controlled group are treated as a single taxpayer for purposes of computing the research credit. The group credit is computed by applying all of the section 41 computational rules on an aggregate basis. All members of a controlled group must use the same method of computation: The method described in section 41(a)(1), the alternative incremental credit (AIRC) method described in section 41(c)(4) (available for years beginning on or before December 31, 2008), or the alternative simplified credit (ASC) method described in section 41(c)(5), in computing the group credit for a credit year.

\* \* \* \* \*

(c) \* \* \*

(2) *Stand-alone entity credit.* The term *stand-alone entity credit* means the research credit (if any) that would be allowable to a member of a controlled group if the credit were computed as if section 41(f)(1) did not apply, except that the member must apply the rules provided in § 1.41–6(d)(1) (relating to consolidated groups) and § 1.41–6(i) (relating to intra-group transactions). Each member's stand-alone entity credit for any credit year must be computed under whichever available method (the method described in section 41(a)(1), the method described in section 41(c)(4), or the method described in section 41(c)(5)) results in the greatest stand-alone entity credit for that member, without regard to the method used to compute the group credit.

\* \* \* \* \*

(e) *Examples.* The following examples illustrate the provisions of this section. Unless otherwise stated, no members of a controlled group are members of a consolidated group, no member of the group made any basic research payments or paid or incurred any amounts to an energy research consortium, and the group has not made an AIRC election (except as provided in *Example 6*) or an ASC election (except as provided in *Example 7*).

\* \* \* \* \*

*Example 7. Group alternative simplified credit.* The following example illustrates a group computation in a year for which the ASC method under section 41(c)(5) is in effect. No members of the controlled group are members of a consolidated group and no member of the group made any basic research payments or paid or incurred any amounts to an energy research consortium.

(i) *Facts.* Q, R, and S, all of which are calendar-year taxpayers, are members of a controlled group. The research credit under section 41(a)(1) is not allowable to the group for the 2011 taxable year (the credit year) because the group's aggregate QREs for the credit year are less than the group's base amount. The group does not use the AIRC method of section 41(c)(4) because it is unavailable for taxable years beginning after December 31, 2008. The group credit is computed using the ASC rules of section 41(c)(5). Assume that each member of the group had QREs in each of the three years preceding the credit year. For purposes of computing the group credit for the credit year, Q, R, and S had the following:

	Q	R	S	Group aggregate
Credit Year QREs .....	\$0x	\$20x	\$30x	\$50x
Average QREs for 3 Years Preceding the Credit Year .....	\$10x	\$20x	\$10x	\$40x

(ii) *Computation of the group credit.* The research credit allowable to the group is computed as if Q, R, and S are one taxpayer. The group credit is equal to 14 percent of so much of the QREs for the credit year as exceeds 50 percent of the average QREs for the three taxable years preceding the credit year. The group credit is  $0.14 \times (\$50x - (0.5 \times \$40x))$ , which equals \$4.2x.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-

alone entity credit for each member of the group must be computed using the method that results in the greatest stand-alone entity credit for that member. The stand-alone entity credit for Q is zero under the regular or ASC methods. Assume that the stand-alone entity credit for each of R (\$1.4x) and S (\$3.5x) is greatest using the ASC method. Therefore, the stand-alone entity credits for each of R and S must be computed using the ASC method. The sum of the stand-alone

entity credits of the members of the group is \$4.9x. Because the group credit of \$4.2x is less than the sum of the stand-alone entity credits of all the members of the group (\$4.9x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The \$4.2x group credit is allocated as follows:

	Q	R	S	Total
Stand-Alone Entity Credit .....	\$0x	\$1.4x	\$3.5x	\$4.9x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits) .....	0/4.9	1.4/4.9	3.5/4.9	
Multiplied by: Group Credit .....	\$4.2x	\$4.2x	\$4.2x	
Equals: Credit Allocated to Member .....	\$0x	\$1.2x	\$3x	\$4.2x

\* \* \* \* \*

(j) *Effective/applicability dates.* \* \* \*

\* \* \* \* \*

(3) *Taxable years ending after June 9, 2011.* Paragraphs (b)(1), (c)(2), and (e) of this section are applicable for taxable years ending after June 9, 2011. For taxable years ending on or before June 9, 2011, see §§ 1.41–6T and 1.41–6 as contained in 26 CFR part 1, revised April 1, 2011.

**§ 1.41–6T [Removed]**

■ **Par. 5.** Section 1.41–6T is removed.

■ **Par. 6.** In § 1.41–8, the section heading and paragraphs (b)(2), (b)(3), (b)(4)(ii), and (b)(5) are revised to read as follows:

**§ 1.41–8 Alternative incremental credit applicable for taxable years beginning on or before December 31, 2008.**

\* \* \* \* \*

(b) \* \* \*

(2) *Time and manner of election.* An election under section 41(c)(4) is made by completing the portion of Form 6765, “Credit for Increasing Research Activities,” (or successor form) relating to the election of the AIRC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(4) may not be made on an amended return. An extension of time to make an election under section 41(c)(4) will not be granted under § 301.9100–3 of this chapter.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(4) if the taxpayer completes the portion of Form 6765, “Credit For Increasing Research Activities,” (or successor form) relating

to the amount determined under section 41(a)(1) (the regular credit) or the alternative simplified credit (ASC) and attaches the completed form to the taxpayer's timely filed (including extensions) original return for the year to which the revocation applies. An election under section 41(c)(4) may not be revoked on an amended return. An extension of time to revoke an election under section 41(c)(4) will not be granted under § 301.9100–3 of this chapter.

(4) \* \* \*

(ii) *Designated member.* For purposes of this paragraph (b)(4), for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under § 1.41–6(c) based on the amount of credit reported on the taxpayer's timely filed (including extensions) original Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a)(1), the AIRC method of section 41(c)(4) (available for years beginning on or before December 31, 2008), or the ASC method of section 41(c)(5)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2008 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is \$10x. Under this method, A would be allocated \$5x of the group credit, which would be the largest share of the group credit under this method. For the credit year, the group credit using the AIRC method is \$15x. Under the AIRC method, B would be

allocated \$5x of the group credit, which is the largest share of the group credit computed using the AIRC method. For the credit year, the group credit using the ASC method is \$10x. Under the ASC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the ASC method. Because the group credit is greatest using the AIRC method and B is allocated the greatest amount of credit under that method, B is the designated member. Therefore, if B makes a section 41(c)(4) election on its original timely filed return for the credit year, that election is binding on all members of the group for the credit year.

(5) *Effective/applicability dates.* This section is applicable for taxable years ending after *June 9, 2011*. For taxable years ending on or before *June 9, 2011*, see §§ 1.41–8 and 1.41–8T, as contained in 26 CFR part 1, revised April 1, 2011.

**§ 1.41–8T [Removed]**

■ **Par. 7.** Section 1.41–8T is removed.

■ **Par. 8.** Section 1.41–9 is revised to read as follows:

**§ 1.41–9 Alternative simplified credit.**

(a) *Determination of credit.* At the election of the taxpayer, the credit determined under section 41(a)(1) equals the amount determined under section 41(c)(5).

(b) *Election—(1) In general.* A taxpayer may elect to apply the provisions of the alternative simplified credit (ASC) in section 41(c)(5) for any taxable year of the taxpayer ending after December 31, 2006. If a taxpayer makes an election under section 41(c)(5), the election applies to the taxable year for which made and all subsequent taxable years unless revoked in the manner prescribed in paragraph (b)(3) of this section.

(2) *Time and manner of election.* An election under section 41(c)(5) is made

by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(5) may not be made on an amended return. An extension of time to make an election under section 41(c)(5) will not be granted under § 301.9100-3 of this chapter.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(5) if the taxpayer completes the portion of Form 6765 (or successor form) relating to the credit determined under section 41(a)(1) (the regular credit) or the alternative incremental credit (AIRC) and attaches the completed form to the taxpayer's timely filed (including extensions) original return for the year to which the revocation applies. An election under section 41(c)(5) may not be revoked on an amended return. An extension of time to revoke an election under section 41(c)(5) will not be granted under § 301.9100-3 of this chapter.

(4) *Special rules for controlled groups*—(i) *In general.* In the case of a controlled group of corporations, all the members of which are not included on a single consolidated return, an election (or revocation) must be made by the designated member by satisfying the requirements of paragraphs (b)(2) or (b)(3) of this section (whichever applies), and such election (or revocation) by the designated member shall be binding on all the members of the group for the credit year to which the election (or revocation) relates. If the designated member fails to timely make (or revoke) an election, each member of the group must compute the group credit using the method used to compute the group credit for the immediately preceding credit year.

(ii) *Designated member.* For purposes of this paragraph (b)(4), for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under § 1.41-6(c) based on the amount of credit reported on the taxpayer's timely filed (including extensions) original Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a)(1), the AIRC

method of section 41(c)(4), or the ASC method of section 41(c)(5)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2011 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is \$10x. Under this method, A would be allocated \$5x of the group credit, which would be the largest share of the group credit under this method. For the credit year, the group credit using the ASC method is \$15x. Under the ASC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the ASC method. Because the group credit is greatest using the ASC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, if C makes a section 41(c)(5) election on its timely filed (including extensions) original return for the credit year, that election is binding on all members of the group for the credit year.

(c) *Special rules*—(1) *Qualified research expenses (QREs) required in all years.* Unless a taxpayer has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the credit equals that percentage of the QREs for the taxable year provided by section 41(c)(5)(B)(ii).

(2) *Section 41(c)(6) applicability.* QREs for the three taxable years preceding the credit year must be determined on a basis consistent with the definition of QREs for the credit year, without regard to the law in effect for the three taxable years preceding the credit year. This consistency requirement applies even if the period for filing a claim for credit or refund has expired for any of the three taxable years preceding the credit year.

(3) *Short taxable years*—(i) *General rule.* If one or more of the three taxable years preceding the credit year is a short taxable year, then the QREs for such year are deemed to be equal to the QREs actually paid or incurred in that year multiplied by 365 and divided by the number of days in that year. If a credit year is a short taxable year, then the average QREs for the three taxable years preceding the credit year are modified by multiplying that amount by the number of days in the short taxable year and dividing the result by 365.

(ii) *Limited exception.* Returns filed for taxable years ending after December 31, 2006, and before June 9, 2011, and

for which the period of limitations has not expired, may be amended to apply the daily calculation for short taxable years provided in paragraph (3)(i) of this section in lieu of the monthly calculation for short taxable years provided in § 1.41-9T(c)(4).

(4) *Controlled groups.* For purposes of computing the group credit under § 1.41-6, a controlled group must apply the rules of this paragraph (c) on an aggregate basis. For example, if the controlled group has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the controlled group applies the credit computation provided by section 41(c)(5)(A) rather than section 41(c)(5)(B)(ii).

(d) *Effective/applicability dates.* This section is applicable for taxable years ending after June 9, 2011. For taxable years ending on or before June 9, 2011, see § 1.41-9T as contained in 26 CFR part 1, revised April 1, 2011.

#### § 1.41-9T [Removed]

■ **Par. 9.** Section 1.41-9T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 2, 2011

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9529]

RIN 1545-BK01

#### Requirements for Taxpayers Filing Form 5472

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations that remove the duplicate filing requirement for Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business." The temporary regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472. The text of the temporary