

(5) *Credit allowed subject to limitation.* The credit allowable to any person to whom any amount has been apportioned under paragraph (a)(1), (2) or (3)(i) of this section is subject to section 41(g) and sections 38 and 39 of the Code, if applicable.

(b) *Adjustments for certain acquisitions and dispositions—Meaning of terms.* For the meaning of “acquisition,” “separate unit,” and “major portion,” see paragraph (b) of § 1.52-2. An “acquisition” includes an incorporation or a liquidation.

(c) *Special rule for pass-through of credit.* The special rule contained in section 41(g) for the pass-through of the credit in the case of an individual who owns an interest in an unincorporated trade or business, is a partner in a partnership, is a beneficiary of an estate or trust, or is a shareholder in an S corporation shall be applied in accordance with the principles set forth in § 1.53-3.

(d) *Carryback and carryover of unused credits.* The taxpayer to whom the credit is passed through under paragraph (c) of this section shall not be prevented from applying the unused portion in a carryback or carryover year merely because the entity that earned the credit changes its form of conducting business.

[T.D. 8251, 54 FR 21204, May 17, 1989. Redesignated by T.D. 8930, 66 FR 295, Jan. 3, 2001]

**§ 1.41-8 Alternative incremental 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)(4).

(b) *Election—(1) In general.* A taxpayer may elect to apply the provisions of the alternative incremental research credit (AIRC) in section 41(c)(4) for any taxable year of the taxpayer beginning after June 30, 1996. If a taxpayer makes an election under section 41(c)(4), 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)(4) is made by completing the portion of Form

6765, “Credit for Increasing Research Activities,” 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.

(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 relating to the regular credit 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.

(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 paragraph (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) of this section, 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 original timely filed 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 (either the method described in section 41(a) or the AIRC method of section

41(c)(4) 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 greater 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 2005 taxable year, the group credit using the method described in section 41(a) 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 2005 taxable year, the group credit using the AIRC method is \$15x. Under the AIRC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the AIRC method. Because the group credit is greater using the AIRC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, C's section 41(c)(4) election is binding on all the members of the group for the 2005 taxable year.

(5) *Effective/applicability dates.* These regulations are applicable for taxable years ending on or after November 9, 2006. For taxable years ending on or after May 24, 2005, and before November 9, 2006, see § 1.41-8T(b)(5) as contained in 26 CFR part 1, revised April 1, 2006. Paragraphs (b)(3) and (b)(4)(ii) of this section are applicable for taxable years ending on or before December 31, 2006. For taxable years ending after December 31, 2006, see § 1.41-8T.

[T.D. 9296, 71 FR 65732, Nov. 9, 2006; 71 FR 70875, Dec. 7, 2006, as amended by T.D. 9401, 73 FR 34189, June 17, 2008]

**§ 1.41-8T Alternative incremental credit (temporary).**

(a) [Reserved] For further guidance, see § 1.41-8(a).

(b) *Election*—(1) [Reserved] For further guidance, see § 1.41-8(b)(1).

(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) *Special rules for controlled groups*—(i) [Reserved] For further guidance, see § 1.41-8(b)(4)(i).

(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 original timely-filed 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 2008 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is