

§ 1.41-1

- (5) Surveys, studies, research relating to management functions, etc.
- (6) Internal use software for taxable years beginning on or after December 31, 1985. [Reserved].
- (7) Activities outside the United States, Puerto Rico, and other possessions.
 - (i) In general.
 - (ii) Apportionment of in-house research expenses.
 - (iii) Apportionment of contract research expenses.
- (8) Research in the social sciences, etc.
- (9) Research funded by any grant, contract, or otherwise.
- (10) Illustrations.
- (d) Recordkeeping for the research credit.
- (e) Effective dates.

§ 1.41-5 Basic research for taxable years beginning after December 31, 1986. [Reserved]

§ 1.41-6 Aggregation of expenditures.

- (a) Controlled group of corporations; trades or businesses under common control.
 - (1) In general.
 - (2) Definition of trade or business.
 - (3) Determination of common control.
 - (4) Examples.
- (b) Minimum base period research expenses.
- (c) Tax accounting periods used.
 - (1) In general.
 - (2) Special rule where timing of research is manipulated.
- (d) Membership during taxable year in more than one group.
- (e) Intra-group transactions.
 - (1) In general.
 - (2) In-house research expenses.
 - (3) Contract research expenses.
 - (4) Lease payments.
 - (5) Payment for supplies.

§ 1.41-7 Special rules.

- (a) Allocations.
 - (1) Corporation making an election under subchapter S.
 - (i) Pass-through, for taxable years beginning after December 31, 1982, in the case of an S corporation.
 - (ii) Pass-through, for taxable years beginning before January 1, 1983, in the case of a subchapter S corporation.
 - (2) Pass-through in the case of an estate or trust.
 - (3) Pass-through in the case of a partnership.
 - (i) In general.
 - (ii) Certain expenditures by joint ventures.
 - (4) Year in which taken into account.
 - (5) Credit allowed subject to limitation.
 - (b) Adjustments for certain acquisitions and dispositions—Meaning of terms.
 - (c) Special rule for pass-through of credit.
 - (d) Carryback and carryover of unused credits.

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§ 1.41-8 Special rules for taxable years ending on or after January 3, 2001.

- (a) Alternative incremental credit.
- (b) Election.
 - (1) In general.
 - (2) Time and manner of election.
 - (3) Revocation.
 - (4) Effective date.

[T.D. 8930, 65 FR 287, Jan. 3, 2001, as amended by T.D. 9104, 69 FR 26, Jan. 2, 2004]

§ 1.41-1 Credit for increasing research activities.

(a) *Amount of credit.* The amount of a taxpayer's credit is determined under section 41(a). For taxable years beginning after June 30, 1996, and at the election of the taxpayer, the portion of the credit determined under section 41(a)(1) may be calculated using the alternative incremental credit set forth in section 41(c)(4).

(b) *Introduction to regulations under section 41.* (1) Sections 1.41-2 through 1.41-8 and 1.41-3A through 1.41-5A address only certain provisions of section 41. The following table identifies the provisions of section 41 that are addressed, and lists each provision with the section of the regulations in which it is covered.

Section of the regulation	Section of the Internal Revenue Code
§ 1.41-2	41(b).
§ 1.41-3	41(c).
§ 1.41-4	41(d).
§ 1.41-5	41(e).
§ 1.41-6	41(f).
§ 1.41-7	41(f).
	41(g).
§ 1.41-8	41(c).
§ 1.41-3A	41(c) (taxable years beginning before January 1, 1990).
§ 1.41-4A	41(d) (taxable years beginning before January 1, 1986).
§ 1.41-5A	41(e) (taxable years beginning before January 1, 1987).

(2) Section 1.41-3A also addresses the special rule in section 221(d)(2) of the Economic Recovery Tax Act of 1981 relating to taxable years overlapping the effective dates of section 41. Section 41 was formerly designated as sections 30 and 44F. Sections 1.41-0 through 1.41-8 and 1.41-0A through 1.41-5A refer to these sections as section 41 for conformity purposes. Whether section 41, former section 30, or former section 44F

applies to a particular expenditure depends upon when the expenditure was paid or incurred.

[T.D. 8930, 65 FR 288, Jan. 3, 2001]

§ 1.41-2 Qualified Research Expenses.

(a) *Trade or business requirement*—(1) *In general.* An in-house research expense of the taxpayer or a contract research expense of the taxpayer is a qualified research expense only if the expense is paid or incurred by the taxpayer in carrying on a trade or business of the taxpayer. The phrase “in carrying on a trade or business” has the same meaning for purposes of section 41(b)(1) as it has for purposes of section 162; thus, expenses paid or incurred in connection with a trade or business within the meaning of section 174(a) (relating to the deduction for research and experimental expenses) are not necessarily paid or incurred in carrying on a trade or business for purposes of section 41. A research expense must relate to a particular trade or business being carried on by the taxpayer at the time the expense is paid or incurred in order to be a qualified research expense. For purposes of section 41, a contract research expense of the taxpayer is not a qualified research expense if the product or result of the research is intended to be transferred to another in return for license or royalty payments and the taxpayer does not use the product of the research in the taxpayer’s trade or business.

(2) *New business.* Expenses paid or incurred prior to commencing a new business (as distinguished from expanding an existing business) may be paid or incurred in connection with a trade or business but are not paid or incurred in carrying on a trade or business. Thus, research expenses paid or incurred by a taxpayer in developing a product the sale of which would constitute a new trade or business for the taxpayer are not paid or incurred in carrying on a trade or business.

(3) *Research performed for others*—(i) *Taxpayer not entitled to results.* If the taxpayer performs research on behalf of another person and retains no substantial rights in the research, that research shall not be taken into account by the taxpayer for purposes of section 41. See § 1.41-4A(d)(2).

(ii) *Taxpayer entitled to results.* If the taxpayer in carrying on a trade or business performs research on behalf of other persons but retains substantial rights in the research, the taxpayer shall take otherwise qualified expenses for that research into account for purposes of section 41 to the extent provided in § 1.41-4A(d)(3).

(4) *Partnerships*—(i) *In general.* An in-house research expense or a contract research expense paid or incurred by a partnership is a qualified research expense of the partnership if the expense is paid or incurred by the partnership in carrying on a trade or business of the partnership, determined at the partnership level without regard to the trade or business of any partner.

(ii) *Special rule for certain partnerships and joint ventures.* (A) If a partnership or a joint venture (taxable as a partnership) is not carrying on the trade or business to which the research relates, then the general rule in paragraph (a)(4)(i) of this section would not allow any of such expenditures to qualify as qualified research expenses.

(B) Notwithstanding paragraph (a)(4)(ii)(A) of this section, if all the partners or venturers are entitled to make independent use of the results of the research, this paragraph (a)(4)(ii) may allow a portion of such expenditures to be treated as qualified research expenditures by certain partners or venturers.

(C) First, in order to determine the amount of credit that may be claimed by certain partners or venturers, the amount of qualified research expenditures of the partnership or joint venture is determined (assuming for this purpose that the partnership or joint venture is carrying on the trade or business to which the research relates).

(D) Second, this amount is reduced by the proportionate share of such expenses allocable to those partners or venturers who would not be able to claim such expenses as qualified research expenditures if they had paid or incurred such expenses directly. For this purpose such partners’ or venturers’ proportionate share of such expenses shall be determined on the basis of such partners’ or venturers’ share of partnership items of income or gain (excluding gain allocated under section