



R&D Tax Credit-AMT Liability

As a section 38 general business credit, the research credit cannot be used to reduce tax liability below the amount of the taxpayer's tentative minimum tax ("TMT") or cannot offset the last 25 percent of regular tax liability that exceeds \$25,000. This treatment has been a disincentive for any taxpayer with AMT liability. Any unused credits are subject to the general carryover under section 39.

In 2015, Congress amended section 38 to allow "eligible small businesses" (as defined under section 38(c)(5)(C)) to ignore their TMT, effective for credits determined for tax years beginning in 2016. For such businesses, in applying the general business credit limitations to these credits, TMT is treated as zero; the limitation based on regular tax liability still applies. Thus, for an eligible small business, the research credit is treated similarly to the energy credit, the rehabilitation credit, the low-income housing credit, the work opportunity credit, and several other so-called specified credits.

An "eligible small business" is a non-publicly traded corporation, a partnership, or a sole proprietorship, if the average annual gross receipts for the three-tax-year period preceding the credit year does not exceed \$50 million. In determining gross receipts, section 38(c)(5)(C) applies rules similar to the rules under section 448(c)(2) and (3), which provide the following:

- All persons treated as a single employer under section 52(a) and (b) or section 414(m) or (o) are treated as one person.
- If the small business was not in existence for the entire three-year period, then the gross receipts requirement is applied on the basis of the period during which such entity was in existence.
- For a short tax year, gross receipts are annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.
- Gross receipts for any tax year is reduced by returns and allowances made during such year.

Furthermore, for a partnership or S corporation, the gross receipts test must be met both by the entity and by the partner or shareholder for the tax year.

For your free analysis and estimate of your company's R&D credit please contact:

Bernie Paramo, Senior Tax Manager
Direct: 562.249.6010
bernie.paramo@dsfgroup.com
www.dsfgroup.com

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