taxnotes® federal

Volume 189, Number 5 ■ November 3, 2025

Moving On From the IRS's Research Issues Campaign

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Reprinted from *Tax Notes Federal*, November 3, 2025, p. 807

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In this article, the authors examine the IRS's research issues campaign, which was implemented to improve the administration of the research credit, and they provide future considerations for taxpayers claiming research credits now that the campaign is inactive.

This article represents the authors' views only and does not necessarily represent the views or professional advice of Grant Thornton Advisors LLC.

I. Introduction

Taxpayers claiming the credit for increasing research activities have experienced uncertainty because of evolving rules and guidance from Congress, the IRS, Treasury, and the courts. The ongoing sea of change has also created challenges for the IRS in regulating the research credit despite initiatives designed to provide taxpayers with greater certainty while easing the agency's administrative burden.[1] Those initiatives included adding the section 41 research credit and research and experimental expenses under section 174 (collectively, research issues) to the list of Large Business and International Division active campaigns in 2020.[2] This article focuses on the changes that took place during the research issues campaign, which was active from 2020 to July 2025, and the taxpayer experience going forward.[3]

II. Background

While the IRS has experimented with initiatives for the administration of the research credit over the years,[4] this article examines more recent developments to provide context for the research issues campaign and recommendations for taxpayers claiming and defending research credits going forward. As the Spanish-American philosopher George Santayana once said, "Those who cannot remember the past are condemned to repeat it."[5]

Beginning in 2006, LB&I employed a tiered management process to set examination priorities and strategically address compliance issues:

- Tier I involved issues of high strategic importance that had a significant effect on one or more industries;
- Tier II involved emerging issues with significant compliance risks or issues on which the IRS needed to further develop its position; and

[1] Rory Bertiglia, Tony Coughlan, and Amanda Laskey, "An Early 21st Century History of IRS Efforts to Police the R&D Credit," *The Tax Adviser*, Apr. 2022, at 10-12.

[2] *See* IRS, "The IRS Large Business and International Division (LB&I) Announces the Approval of Two Additional Compliance Campaigns" (Feb. 27, 2020).

[3] This article includes some developments that, while perhaps not directly concerned with the research issues campaign per se, were implemented while the campaign was active and played a role in taxpayers' experiences with the research credit.

[4] One example was a pilot program that would permit the IRS and large and mid-size business taxpayers to enter into research credit recordkeeping agreements. *See* Notice 2004-11, 2004-1 C.B. 434.

[5] George Santayana, *The Life of Reason, Volume 1: Reason in Common Sense* at 284 (1905).

- Tier III involved issues that presented a high compliance risk for a particular industry.[6]

On April 4, 2007, the IRS issued a directive announcing research credit claims as a Tier I issue, explaining the need for this designation as follows:

> Formal and informal research claims are filed using high-level estimates, invalid assumptions, lack of nexus between qualified research expenses (QREs) and the business component without contemporaneous documentation to support the claim. Major accounting firms and professional boutique firms market research credit studies as a tax product, and in many instances are preparing these claims on a contingency fee basis. Thus, a taxpayer faces limited risk when claims are prepared under a contingency fee agreement. Audit teams expend enormous resources perfecting these claims and generally disallowing a large portion of the claim.[7]

The directive also identified as areas of concern studies being marketed on a contingency fee basis and those that relied on biased judgment samples.[8] This aligns with the IRS's view that judgment sampling lacks the scientific safeguards found in statistical sampling, and that its only assurance of accuracy stems from the judgment of the sampler.[9]

Because research credit claims were a Tier I issue, examination teams issued a mandatory information document request at the beginning of an examination. The goal was not to expend audit resources reconstructing taxpayer claims, but to audit only claims that could be properly substantiated. The IDR was designed to enable that determination and, if a claim was not adequately supported, to fortify the issuance of a notice of claim disallowance. A subsequent IRS directive providing guidance was issued January 15, 2009.[10]

In a directive issued August 3, 2012, then-IRS Commissioner Heather Maloy announced that LB&I would no longer manage issues through the tiered process. While this signaled a change in approach, the directive clarified that LB&I's goal remained the same — to continue to produce high-quality work — but with an increased emphasis on cooperation and collaboration among all parties involved in the examination process. The directive also clarified that issues previously under the tiered issue program should be risk-assessed and examined in the same manner as any other issue in an audit.[11]

Through the Protecting Americans From Tax Hikes (PATH) Act of 2015,[12] the research credit was made permanent[13] and expanded for certain taxpayers. While taxpayers and other stakeholders celebrated the PATH Act for its generally taxpayer-favorable changes to the research credit, it provided another opportunity for promoters to exploit the credit. This prompted the IRS to include the research credit on its "Dirty Dozen" list of tax scams[14] from 2016 to 2019 and in 2021.[15] The annual Dirty Dozen announcements warn taxpayers to watch for improper claims for business credits, which included the research credit:

> The IRS does see a significant amount of misuse of the research credit each year. Improper claims for the research credit generally involve failures to participate in or substantiate qualified research activities and/or satisfy the requirements related to qualified research expenses. . . . To claim a research credit, taxpayers must

[6] Sally P. Schreiber, "IRS Announces the End of Tiered Issues," *Journal of Accountancy*, Aug. 16, 2012.

[7] LMSB-4-0307-025, "Tier I Issue Research & Experimentation (R&E) Credit Claims Directive #1" (Apr. 4, 2007). *See also* IRS, "Tier I Research Credit Claims Quick Reference Guide" (Oct. 2010).

[8] LMSB-4-0307-025.

[9] *See* IRS, Appeals Technical Guidance Research Credit Team, "Substantiating Research and Experimentation Expenditures" (draft 2006).

[10] *See* IRS, "Quick Reference Guide," *supra* note 7.

[11] LB&I-04-0812-010 (Aug. 17, 2012).

[12] P.L. 114-113, part 3, section 121 (Dec. 18, 2015).

[13] Since its introduction in 1981, the research credit was temporarily extended 16 times before being made permanent. *See* Treasury Office of Tax Analysis, "Research and Experimentation (R&E) Credit," at 1 (Oct. 12, 2016).

[14] Compiled annually, the "Dirty Dozen" lists a variety of common scams that taxpayers may encounter any time, but many of these schemes peak during filing season as people prepare their returns or hire people to help with their taxes.

[15] IR-2016-29, IR-2017-37, IR-2018-66, IR-2019-49, and IR-2021-144.

> evaluate and appropriately document their research activities over a period of time to establish the amount of qualified research expenses paid for each qualified research activity. While taxpayers may estimate some research expenses, taxpayers must have factual basis for the assumptions used to create the estimates. Unsupported claims for the research credit may subject taxpayers to penalties. Taxpayers should carefully review reports or studies prepared by third parties to ensure they accurately reflect the taxpayer's activities. Third parties who are involved in the preparation of improper claims or research credit studies also may be subject to penalties.[16]

The IRS was particularly concerned with promoters that encouraged improper claims for refund, which lacked adequate substantiation.[17] The IRS considered this a significant issue that it tried to address through the research credit refund claim process, discussed later.

In addition to general taxpayer outreach and identification of tax scams, the IRS continued to consider developing other tools to help with administration such as the tiered issue program. Years after that program ended, Maloy shared her perspective on the importance of innovation in the tax administration process:

> In a time of limited resources, actions taken by the tax administrator should be designed to have a multiplier effect — to change the behavior of as many taxpayers as possible. The best way to achieve that effect is to resolve most if not all of the uncertainty in the law before a taxpayer files a return. . . . The IRS already uses several innovative programs that have embraced the concept of providing certainty. . . . The question now is what the next generation of those and other innovative programs will look like.[18]

As research credit claims continued to increase, so too did the need to implement a program that would provide taxpayers with increased certainty and transparency in the research credit examination process.

III. LB&I Campaign Program and the Research Issues Campaign

The origins of the newly rebranded, issue-based workstreams started during fiscal 2014 when the IRS began working with a contractor to redesign the concept of operations as part of the future state of the IRS. The contractor developed a concept of operations document, dated December 31, 2014, that emphasized the role of data analytics to identify the greatest risks to compliance and to determine the selection of work based on that compliance risk. This appears to be the first time the term "campaign" was used to describe the new approach.[19]

On January 31, 2017, LB&I announced the selection of 13 initial campaigns. The IRS described the launch of the campaigns as the culmination of an extensive effort to redefine compliance work and build a supportive infrastructure. The campaign program was designed to allow LB&I to address significant compliance and resource challenges. Campaign development requires strategic planning and deployment of resources, training, tools, metrics, and feedback.[20]

The IRS received initial feedback from the Treasury Inspector General for Tax Administration based on a review assessing LB&I's method for the selection of campaigns. As of April 2019, 53 campaigns had been announced and TIGTA issued a final report regarding its findings and recommendations to strengthen and supplement LB&I's processes for identifying and prioritizing potential campaign areas.[21] After TIGTA issued that report, on February 27, 2020, LB&I created the research issues campaign as a

[16] IR-2016-22.

[17] Sandra R. Brown, Evan Davis, and Steven Toscher, "Use, but Don't Abuse Those R&D Tax Credits," *Los Angeles Lawyer*, May 2022.

[18] Maloy, "Can a Change in LB&I Approach Improve Taxpayer Compliance?" *Tax Notes*, Mar. 14, 2016, p. 1353.

[19] *See* Treasury Inspector General for Tax Administration, "Initial Compliance Results Warrant a More Data-Driven Approach to Campaign Issue Selection," No. 2019-30-066, at 2-3 (Sept. 27, 2019).

[20] *See* IRS, "Large Business and International Compliance Campaigns" (updated May 1, 2025).

[21] *See* TIGTA, *supra* note 19, at "Highlights" section.

new active compliance campaign and provided the following summary:

> The Research Issues Campaign will address research credit and research and experimental expenditures issues. Issues involving the research credit and research and experimental expenditures under sections 41 and 174 are some of the most relevant tax issues within Large Business and International, utilizing significant examination and taxpayer resources. The campaign will employ various treatment streams including issue-based examinations, form updates, and requests for guidance. Other treatment streams will be considered as the campaign progresses. The campaign objective is to promote voluntary compliance, focus resources on the highest risk research issues and increase consistency of examinations.[22]

After pandemic-related work delays caused by COVID-19, LB&I began rolling out the research issues campaign to new audits several months after the announcement.[23] Professional service providers began providing taxpayers with recommendations that included: (1) being attuned to the IRS's cost-benefit analysis, (2) considering escalation regarding a campaign-related issue, and (3) being prepared for future enforcement.[24] To bring awareness to the research issues campaign, representatives from the IRS[25] spoke in several public forums and provided the following insights:

- What is a campaign? It is a holistic response to compliance risk, focusing on the use of resources and treatment streams.[26]
- How do campaigns function? By harnessing the combined intellect of the team to achieve a fundamental change, drive specific compliance objectives, and improve our understanding of risk.
- What are the four guiding principles of a campaign? (1) To cultivate an environment of continuous learning, (2) to use data analytics and examiner feedback, (3) to employ an integrated set of tailored treatment streams, and (4) to drive continual collection and analysis of data and feedback.
- How do we measure the success of a campaign? We measure in terms of metrics, impact, research, and improved compliance.
- What are the goals of the research issues campaign? To conduct issue-based examinations using filtering techniques to identify high-risk returns; promote consistency of examinations and voluntary compliance through proper issue development; and, based on the information gathered from examinations, request additional guidance and form updates to assist with reporting and auditing of research issues.
- Who is on the core team for the research issues campaign? The core team includes executive leads, senior managers, and frontline manager specialists, senior managers and frontline managers in the general business credit practice network, subject matter experts, engineers, counsel, geographic practice area frontline manager liaisons, and other specialists, such as computer audit specialists.
- How does the core team support examination teams through the research issues campaign? By assisting with the identification of research credit sub-issues; providing guidance, training, and resources; and aiding specialist assignments.[27]
- How does the campaign achieve its intended compliance outcomes? By focusing on selected compliance risks, identifying proper resources, applying the

[22] *See* IRS, "List of LB&I Active Campaigns" (Feb. 27, 2020).

[23] Lydia O'Neal, "IRS Auditing Campaign Related to R&D Kicking Into Gear: Official," Bloomberg Daily Tax Report, Sept. 16, 2020.

[24] John T. Hildy et al., "The LB&I Campaign: An Empty Trojan Horse?" *Tax Notes Federal*, Aug. 17, 2020, p. 1209.

[25] We appreciate the level of effort and intentionality that went into external stakeholder outreach and education regarding the research issues campaign. For example, Cheryl Teifer, the executive lead and owner of the research issues campaign, played a significant role in promoting the campaign.

[26] Federal Bar Association Tax Law Conference, "LB&I Update" (Mar. 7-8, 2019).

[27] Tax Executives Institute and San Jose State University 36th annual High Tech Tax Institute Conference, "Research Tax Credit: Tech, TCJA, IRS Campaign and More" (Nov. 9, 2020). Unless otherwise noted, the majority of the questions and answers provided above were from this conference.

proper combination of treatment streams, implementing feedback loops, and making adjustments based on that feedback.[28]

The addition of the research credit to the issues campaign was anticipated by industry leaders because of the credit's contentious and factually intensive nature.[29] However, the success of the campaign was seen as uncertain because its predecessor, the tiered issue program, had arguably failed to improve the administration of the research credit.

IV. Campaign Implementation and Other Developments

On the same day the research issues campaign was announced, representatives from the Tax Executives Institute, the IRS, and the Independent Office of Appeals participated in their 2020 liaison meeting. One planned topic for discussion involved the role of MITRE Corp. in the examination of research credits.[30]

In a recent white paper, a former IRS executive with 32 years of experience with the agency provided the following insights regarding MITRE:

> MITRE, a non-profit organization established in 1958, plays a significant role in research credit audits, particularly in software-related cases. MITRE provides analytical support to the IRS, offering recommendations on how to evaluate software projects for research credits. Keep in mind that the IRS pays MITRE. Though they're an independent organization, there are patterns in them very regularly disallowing the credit. MITRE's role in research credit audits is generally focused on data analysis and interviews, while collaborating with the IRS.[31]

Historically, the IRS required MITRE involvement for a three-year audit cycle when an aggregate research credit claim exceeded $1.5 million, or $500,000 per year for audit cycles shorter or longer than three years.[32]

The comments prepared for the TEI liaison meeting framing taxpayer feedback regarding the role of MITRE in research credit examinations included the following:

> The involvement of MITRE in a case frequently upsets the operational dynamics of an otherwise efficient examination plan. It is common for MITRE representatives to disregard examination process commitments agreed to at the onset of an examination (e.g., not adhering to timeline commitments set forth in the examination plan, causing unreasonable delays in closing examinations, not following agreements concerning in-person interviews). We invite discussion of what rules of engagement apply to MITRE and what taxpayers should do if they are not followed. We invite discussion of what legal training MITRE representatives receive and the extent to which they should be making legal determinations in their examinations (e.g., determining the applicability of Treasury regulations to a particular tax year or otherwise interpreting guidance and making policy calls).[33]

While this was presented in the context of research credit claims that relied on the Accounting Standard Codification (ASC) 730 directive,[34] taxpayers have shared similar feedback on the role of MITRE in non-ASC 730 directive claims. This topic was frequently raised during the research issues campaign, and the IRS revamped MITRE's role. The IRS now focuses on engaging MITRE on high-risk research credit claims involving software development and the agency revoked the prior memorandum that

[28] *See* Federal Bar Association Tax Law Conference, *supra* note 26.

[29] Kathleen King, Alex Sadler, and Doug Rodolph, "TEI Roundtable No. 31: Research and Experimentation Credits," *Tax Executive*, Nov. 3, 2020.

[30] TEI, "Tax Executives Institute, Inc., Internal Revenue Service & Independent Office of Appeals 2020 Liaison Meeting Agenda" (Feb. 27, 2020).

[31] MASSIE R&D Tax Credits, "R&D Tax Credit Best Practice Roundtable Q3 2024," at 8 (Oct. 2, 2024).

[32] *See* IRS Memorandum, "Section 41 Credit for Increasing Research Activities ('Research Credit'): Internal-Use Software Experts" (May 30, 2003).

[33] *See* TEI 2020 Liaison Meeting Agenda, *supra* note 30.

[34] LB&I-04-0820-0016 (Sept. 10, 2020).

outlined a dollar threshold for MITRE involvement.[35]

Twelve days after the announcement of the research issues campaign, LB&I released a directive on the centralized risk management of research issues under sections 41 and 174.[36] The LB&I directive said:

> The Research Risk Review Team (RT) is a national strategy to improve the identification of the highest risk research issues under IRC sections 41 & 174. The RT consists of subject matter experts, engineers, revenue agents and other specialists. The RT promotes compliance by focusing its efforts on helping identify high risk returns, including claims and engages in knowledge sharing through collaboration with field employees. Taxpayers and examination teams will benefit from a comprehensive risk analysis that provides a proper depth and scope of the exam which supports a consistent direction for the efficient examination of research issues.

The directive further provided that the research risk review team is required to review and concur with the preliminary risk analysis for new examinations of research issues. It clarified that "research issues" under section 41 refer to any regulatory requirements to claim the research credit for:

- section 41(d) issues of whether and to what extent qualified research activities were performed by the taxpayer to develop new or improved business components;
- section 41(b) issues of whether expenditures estimated and allocated to qualified research are allowable and credible; and
- section 41(c) issues of whether the taxpayer properly substantiated an increase in qualified research expenses over its base amount.

Further, research issues under section 174 and the regulations refer to:

- whether research activities constitute research and development within the meaning of section 174; and
- whether expenditures connected with the research credit are first eligible for treatment as research or experimental expenditures under section 174.[37]

The LB&I directive does not apply to research issues campaign inventory or taxpayers in the compliance assurance process program (CAP).[38] It does apply to LB&I examinations of industry cases, large corporate compliance cases, and all claims and amended returns.[39]

This is significant because the directive, which was effective for any *new* research issues identified on or after April 1, 2020, appeared to streamline the focus on technical issues while ensuring a consistent taxpayer experience. Also, while the research risk review team has been used for taxpayers in CAP, it appears that it will also be formally used for more research credit examinations.[40]

On September 10, 2020, LB&I issued a directive that provided examiners with guidance for the allowance of research credits for taxpayers that expense R&D costs for their financial statements under ASC 730.[41] This revised and clarified the original directive,[42] which was issued in 2017, by:

- increasing the commissioner's discretion for determining taxpayer eligibility;
- revising the definition of an eligible taxpayer;
- excluding internal-use software (ASC 350) expenditures;
- adding two documentation requirements; and

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[35] Morgan Lewis, Ninth Annual Research and Development Tax Credit Symposium, at 160 (Nov. 16, 2023).

[36] LB&I-04-0320-0006 (Mar. 10, 2020).

[37] *Id.*

[38] CAP employs real-time issue resolution tools and techniques to improve federal tax compliance. In CAP, the IRS and taxpayer work together to achieve tax compliance by resolving issues before the tax return is filed. Successful conclusion of CAP allows the IRS to achieve an acceptable level of assurance regarding the accuracy of the taxpayer's filed tax return and to substantially shorten the length of the post-filing examination.

[39] LB&I-04-0320-0006.

[40] Diane Stogiannes et al., "The Research & Experimentation Credit: New Issues on the Horizon," *Tax Executive*, July 15, 2020.

[41] *See* LB&I-04-0820-0016.

[42] LB&I-04-0917-005 (Sept. 11, 2017).

- clarifying the examination process.

The directive originally was intended to provide an efficient approach for determining the amount of QREs for LB&I taxpayers while at the same time reducing the compliance burden on taxpayers and examiners.[43] LB&I provided further certainty for taxpayers relying on the directive in the form of FAQs[44] and the updated directive.

As part of the ongoing efforts to enhance the effective and efficient resolution of research credit issues and to provide a forum for stakeholder engagement, LB&I created a virtual roundtable working group in 2020, made up of representatives from invited organizations.[45] In general, stakeholders were provided with a valuable opportunity to help identify (1) inputs that can further inform IRS risk assessment of issues for improved selection or deselection of issues, (2) opportunities for additional efficiencies in exams of research credits, and (3) avenues for improving certainty for taxpayers and tax administration. This group of external stakeholders provided timely and meaningful insights for the IRS, which resulted in updated training and technical reference tools[46] and some of the updates discussed later.

On October 15, 2021, the IRS issued an information release setting forth information that taxpayers must include for a research credit claim for refund to be considered valid beginning January 10, 2022.[47] The release emphasized that a taxpayer filing a refund claim must set forth sufficient facts to apprise the IRS of the basis of the claim or it will be deemed invalid. The release also included a link to a field attorney advice memorandum[48] that will be used to improve tax administration by providing clearer instructions for eligible taxpayers to claim the research credit while reducing the number of disputes over those claims.

The memorandum was 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 following information, the IRS will be better able to proactively determine if a research credit refund claim should be paid immediately or whether further review is needed. At a minimum, a taxpayer must:

- Identify all the business components to which the IRC section 41 research credit claim relates for that year.
- For each business component:
  - identify all research activities performed;
  - identify all individuals who performed each research activity; and
  - identify all 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 (this may be done using Form 6765, "Credit for Increasing Research Activities").[49]

IR-2021-203 provided taxpayers with a 30-day grace period (expanded to 45 days) to perfect the refund claim by providing additional information the IRS requested. The grace period has been extended three times and is in place through January 10, 2027.[50]

The IRS later released FAQs and announced that, effective for claims postmarked as of June 18, 2024, it is waiving the requirement that taxpayers provide the following two items of information with their refund claims involving the research credit:

- the names of the individuals who performed each research activity; and
- the information each individual sought to discover.

[43] IR-2017-158.

[44] *See* IRS, "FAQs — IRC 41 QREs and ASC 730 LB&I Directive" (updated Nov. 27, 2024).

[45] This invitation-only working group included a representative from each of the larger public accounting firms, a prominent provider of research credit services, and professional organizations. One of the authors here, Kevin Benton, has represented Grant Thornton since the inception of the group in 2020.

[46] *E.g.*, *see* IRS, "SB/SE Research Credit Practice Aid" (undated).

[47] IR-2021-203.

[48] FAA 20214101F.

[49] *Id.*

[50] *See* IR-2021-203. With the new Form 6765 incorporating many of the requirements from the research credit refund claim process, we anticipate that the claim process through FAA 20214101F will be retired.

The IRS made these changes after significant experience with the research credit refund claims process.[51]

Although these updates were taxpayer-favorable, the refund claim process continues to be met with harsh feedback from taxpayers and other stakeholders. For example, some stakeholders pointed out that FAA 20214101F acknowledged in a footnote that the *Premier Tech*[52] case existed and that "the Service and Counsel are evaluating the opinion."[53] The court in *Premier Tech* said, "If the IRS wants more information about the research tax credits, the IRS could require that information on Form 6765," which implied that if Form 6765 is insufficient, then the IRS should modify it.[54]

On September 15, 2023, the IRS released a preview of proposed changes to Form 6765, beginning with the 2024 tax year, and solicited comments from stakeholders. The preview included a new section for reporting quantitative and qualitative information for each business component (section G), new questions seeking various information, and reordering some existing questions.

Based on feedback from various external stakeholders, Form 6765 was revised to reduce taxpayer burden. The changes included the optional reporting of business component details for certain taxpayers:

- qualified small business taxpayers, defined under section 41(h)(1) and (2), who check the box to claim a reduced payroll tax credit;[55] or
- taxpayers with total QREs equal to or less than $1.5 million, determined at the control group level, and equal to or less than $50 million of gross receipts, as determined under section 448(c)(3) (without regard to subparagraph (A)), claiming a research credit on an original filed return.[56]

Also, in response to feedback from stakeholders, the IRS reduced the number of business components that must be reported on section G. Taxpayers must report 80 percent of total QREs in descending order by the amount of total QREs per business component, but no more than 50 business components (with special instructions for taxpayers using the ASC 730 directive that can report ASC 730 QREs as a single line item on section G).[57]

While the revisions to the business component reporting provided taxpayers with welcome relief, stakeholders continue to provide comment letters to the IRS requesting changes to Form 6765 and the instructions, and further guidance.[58]

On October 1, 2025, the IRS announced that the section G business component reporting requirements were delayed for one year and the comment period for the draft instructions was extended through March 31, 2026. Further, as mentioned, the 45-day transition period for taxpayers to perfect their research credit refund claims was extended through January 10, 2027.[59]

In addition to seeking guidance regarding Form 6765 and instructions, Treasury and the IRS have included the research credit in recent priority guidance plans. On September 29, 2023, Treasury and the IRS released their initial 2023-2024 priority guidance plan, which identified 237 guidance projects that were to take precedence for allocating resources during fiscal 2024. In general, the published guidance process can succeed only if taxpayers and practitioners (who must apply the rules) share their insights and experiences. Therefore, the public was invited to continue to provide comments and suggestions because

[51] *See* IRS, "Research Credit Claims (Section 41) on Amended Returns Frequently Asked Questions" (updated Oct. 1, 2025).

[52] *Premier Tech Inc. v. United States*, No. 2:20-cv-00890 (D. Utah July 15, 2021).

[53] *Id.* at 11, n.27.

[54] *See id.* and Jennifer Frost et al., "Research Credit Refund Claims: New Documentation Requirements," *The Tax Adviser*, Feb. 2022, at 9-11.

[55] Unless qualified small business taxpayers are limited by the maximum amount of their research credit that could be applied against their payroll tax liability, which increased from $250,000 to $500,000 for tax years beginning after December 31, 2022, they commonly claimed the gross credit to maximize cash flow.

[56] Qualified small business taxpayers who do not meet the second criterion should evaluate whether they should claim the gross payroll tax credit and complete section G or claim the reduced payroll tax credit and be excluded from completing section G. The difference between the gross and net credit could affect the timing of when the credit will be used, particularly for startup taxpayers in net operating losses.

[57] IR-2024-171.

[58] For example, *see* the American Bar Association's comment letter addressed to Scott Bessent, Treasury secretary and acting IRS commissioner, regarding "Comments on the Research Credit Under Section 41" (Sept. 15, 2025).

[59] IR-2025-99.

Treasury and the IRS intended to periodically update the plan throughout fiscal 2024.[60]

The initial plan and each quarterly update included the need for "regulations under section 41 addressing research credit substantiation."[61] This specific item was also included in the initial version of the 2024-2025 priority guidance plan and each quarterly update.[62]

On September 30, 2025, Treasury and the IRS released the initial 2025-2026 priority guidance plan, which focused on 105 guidance projects within five key areas: (1) implementation of the One Big Beautiful Bill Act (P.L. 119-21), (2) deregulation and burden reduction, (3) guidance addressing tribal tax issues, (4) digital assets, and (5) the SECURE 2.0 Act.[63] Because the research credit did not fall into one of those key areas, it was excluded from the 2025-2026 plan; however, that does not preclude its being included in later plans.[64]

V. Research Issues Campaign Ends

On July 16, 2025, LB&I changed the status of the research issues stand-alone campaign to inactive. That increased the number of inactive campaigns to 35. The results and feedback from the research issues campaign were used to improve future identification of noncompliance and develop tools to support future examinations; therefore, the campaign was determined to be fully implemented or operationalized.

LB&I clarified that the scope of a future examination outside of the campaign workstream is possible and that it may reinstate the research issues campaign if it is warranted. Also, there may still be examinations begun under the campaign that are continuing although the campaign became inactive.[65]

VI. Recommendations

As we move forward, taxpayers should actively engage with the IRS on evolving issues, staying current with recent developments, and annually evaluating research credit methods. This may include applying to the updated prefiling agreement (PFA) program. These best practices are designed to help achieve positive results for taxpayers while encouraging effective tax administration and other core principles of good tax policy, such as certainty, economic growth and efficiency, and fairness.[66]

A. Actively Engaging With the IRS on Evolving Issues

One benefit of the LB&I campaign program was the establishment of integrated feedback loops that were designed to hear from IRS employees, taxpayers, and practitioners regarding specific campaigns. This information is important for the IRS to evaluate campaigns and determine whether any modifications are necessary, including terminating a campaign when it is no longer necessary.[67]

For the research issues campaign, the integrated feedback loop included the virtual roundtable working group, which provided real-time feedback on several technical and procedural topics through periodic calls and a comment letter. We believe that continued collaboration between the IRS and this working group is mutually beneficial to achieving long-term improvement for the administration of the research credit.

However, because of unprecedented leadership turnover, mass staff reductions, and an exodus of civil servants during 2025, taxpayers may find it more challenging than ever to collaborate with the IRS and receive answers to questions concerning tax compliance.[68] For example, several questions still exist regarding the Form 6765 reporting requirements for tax years beginning after December 31, 2024. These questions show the need for guidance on:

- explicitly permitting the use of statistical sampling;

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[60] *See* IRS, "2023-2024 Priority Guidance Plan," at 1-2 (Sept. 29, 2023).

[61] *Id.* at 10, "General Tax Issues #2."

[62] *See* IRS, "2024-2025 Priority Guidance Plan," at 9 (Oct. 3, 2024).

[63] P.L. 117-328, division T.

[64] *See* IRS, "2025-2026 Priority Guidance Plan," at 1-2 (Sept. 30, 2025).

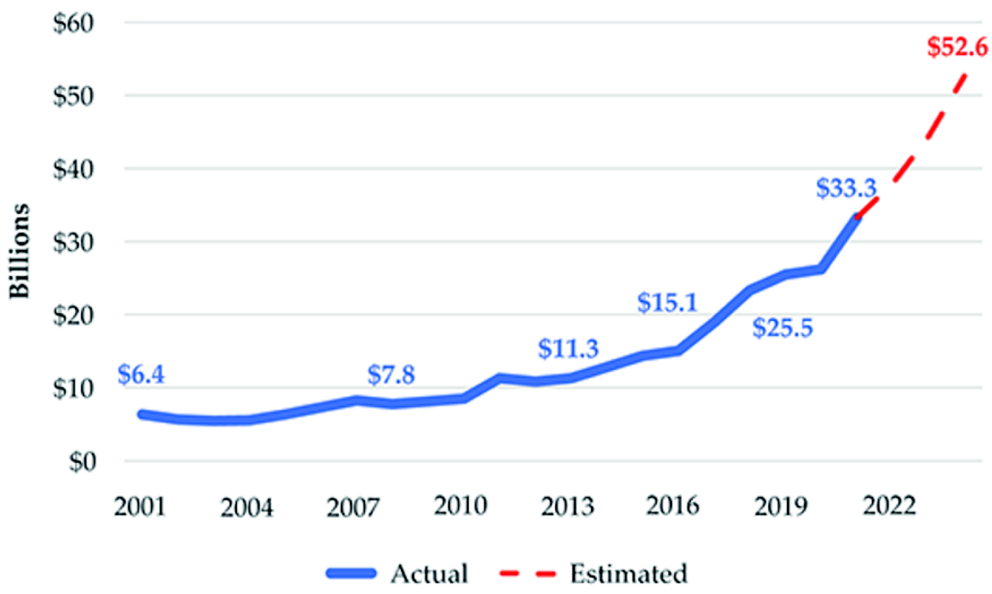
[65] *See* IRS, "List of LB&I Active Campaigns," *supra* note 22.

[66] American Institute of CPAs, "Tax Policy Concept Statement 1 Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals," at 3 (May 9, 2025).

[67] *See* Federal Bar Association Tax Law Conference, *supra* note 26.

[68] Vanessa Williamson, "The IRS Faces Unprecedented Leadership Turnover," The Brookings Institution (Aug. 12, 2025).

Corporation Research Credits (Actual 2001-2021, Estimated 2022-2024)



Source: IRS Statistics of Income division and the authors' calculations using annual reported data from a sample of S&P 500 companies.

- relying on the process of experimentation for research credit eligibility;
- including support and supervision activities in the "substantially all" test as discussed in *Little Sandy Coal*;[69] and
- permitting the use of financial accounting records to substantiate QREs as a safe harbor.[70]

Stakeholders should also collaborate with the Taxpayer Advocate Service, an independent organization within the IRS that can recommend changes to Congress to help prevent future compliance challenges.

B. Staying Current With Recent Developments

Several recent cases before the courts have involved research credit claims — many of which relate to credits claimed more than a decade ago. While this is not uncommon based on the timeline of IRS audits and appeals, and the judicial process, this trend may be compounded by the substantial increase in research credits being claimed, as shown in the figure.

The data shown in the figure do not include research credit claims taken by passthrough entities, nor do they consider changes filed on amended returns.[71]

It is critical for taxpayers to stay current with developments regarding the research credit and to understand the potential effect on taxpayers with similar profiles, such as entity type, size, industry, and technical positions. Taxpayers must keep in mind the analysis and reasoning of these cases and not just the result or whether a case is generally viewed as being favorable from a taxpayer's standpoint. When reviewing case law, taxpayers should also consider the type of court and its jurisdiction when evaluating the potential effects and applicability of a ruling.

Research credit studies that are structured around technical positions provide taxpayers with greater transparency regarding how, through the lens of the code and regulations, their facts are similar or different from case law. This can enable taxpayers to better navigate an audit

[69] *Little Sandy Coal Co. v. Commissioner*, T.C. Memo. 2021-15, *aff'd*, 62 F.4th 287 (7th Cir. 2023).

[70] *See* ABA letter, *supra* note 58.

[71] Martin A. Sullivan, "The Research Credit Keeps Growing and Growing," *Tax Notes Federal*, Mar. 24, 2025, p. 2135.

and help the examination team achieve the goal of providing a consistent taxpayer experience.

C. Annually Evaluating Research Credit Methods

Because each tax year stands on its own, taxpayers should revisit their methods for identifying and analyzing QREs and activities to determine if they should be revised. For example, revision may be necessary when there have been changes to:

- organizational structure, including acquisitions or dispositions;
- the way time and costs are tracked to projects;
- product development life cycles or stage gate processes;
- specific agreement terms with customers and contractors; or
- the way contemporaneous documentation is generated for research projects.

Even if there has been no change in facts, taxpayers may benefit from evaluating if different methods are available and could provide better results. This may include the use of tax technical tools and administrative safe harbors, such as the ASC 730 directive,[72] patent safe harbor,[73] pharmaceutical directive,[74] or statistical sampling.[75]

To the extent that a taxpayer changes its research credit claim method, it would be prudent to document that change, including how the change is supported through technical positions from the code, regulations, and other guidance.

D. Evaluating the Role of AI in the Research Credit

As the use of artificial intelligence and technology continues to increase in the tax world, a common question from taxpayers, professional services firms, and the IRS is: "How should AI be used?" In a recent interview, former IRS Commissioner Daniel Werfel[76] provided valuable insights into this fundamental question:

> AI can bring higher efficiencies when used in concert with human interaction. . . . The use of AI in the workplace, including the IRS, means that you can unlock new productivities . . . [however] AI is an opportunity and a risk. While AI certainly has a role in tax — especially repeatable tasks with predictable outcomes — it cannot replace the need for informed and knowledgeable tax experts.[77]

Taxpayers should consider how they can use AI and similar technologies to claim and defend research credits — and how they can challenge its use by the IRS during an examination. However, while there is long-term potential for using AI in specialized areas of tax, the role of tax subject matter experts to identify continuous improvements and execute strategic opportunities is more important than ever before.

E. Considering the Updated PFA Program

The IRS recently announced improvements to the PFA program[78] to provide greater tax certainty for LB&I taxpayers. These improvements mark a renewed commitment by the IRS to expand access to cooperative tax compliance strategies that prevent disputes before they arise. The PFA program allows taxpayers to resolve potential tax issues before filing their returns — offering certainty, reducing audit risk, and encouraging voluntary compliance. Key enhancements to the PFA program include:

- a redesigned PFA landing page with program statistics,[79] a streamlined process overview, and direct navigation to dispute-prevention resources;
- new step-by-step instructions for submitting a PFA request, including

[72] LB&I-04-0820-0016.

[73] Reg. section 1.41-4(a)(3)(iii). In *Moore v. Commissioner*, T.C. Memo. 2023-20, the Tax Court found that the patent safe harbor proved to be insufficient when demonstrating the specific activities performed by the company's president and chief operating officer in the qualified research.

[74] LB&I-04-1212-014 (Dec. 7, 2012).

[75] Rev. Proc. 2011-42, 2011-37 IRB 318.

[76] Werfel was commissioner from 2023 to 2025. He and his team were challenged with how to increase the use of technology to help address the backlog of returns because of the COVID-19 pandemic.

[77] Kelly Phillips Erb, "The Use of AI Is Taking Off at the IRS and Tax Firms — What Could It Mean for You?" *Forbes*, Aug. 29, 2025.

[78] The PFA program is granted authority under Rev. Proc. 2016-30, 2016-21 IRB 981.

[79] For example, the PFA request acceptance rate from 2019 to 2024 was 67 percent.

response time expectations and post-submission next steps;
- a dedicated page of likely suitable issues and documentation that will help taxpayers identify if PFA requests are appropriate for their situations; and
- updated program guidelines to help businesses strategically align their PFA submissions with tax filing deadlines.[80]

The first of 10 likely suitable PFA issues listed on the IRS's website is the research credit. Taxpayers are provided with a list of 20 items that the IRS will need to review upon acceptance into the PFA program.[81] Also, there is a disclaimer that says the likely suitable issues and documentation listed on the page are subject to change based on the experience of IRS personnel and taxpayer interest in the program.[82]

The IRS charges a $181,500 user fee if a taxpayer is accepted into the program. Additional time and effort is needed to work closely with the IRS throughout the process. Taxpayers are encouraged to submit their applications early to give the IRS eight to nine months to review, develop, and finalize the agreement.[83] The PFA program may be highly beneficial for taxpayers with research credit claims that will continue to include issues such as pilot models, internal-use software, and funded research.

The improvements to the PFA program generally have drawn positive observations. For example, in a recent *Tax Notes* blog, tax professionals wrote:

> We are optimistic that the changes to the PFA program will be beneficial for taxpayers striving to gain certainty for specific issues. . . . Given the potential to resolve a research credit issue for the current tax year and up to four additional tax years, taxpayers with large claims may want to review the items identified by the IRS and consider whether now is the time to explore the PFA program.[84]

We share this optimism and believe that more taxpayers should use the PFA program to achieve a more consistent experience in defending their research credit claims.

VII. Conclusion

Based on the historical cadence of the IRS's initiatives, taxpayers will have the next few years to evaluate if, and to what extent, the research issues campaign was successful. We are optimistic that the agency will continue to have open discussions and collaborate with taxpayers and stakeholders to improve the administration of the research credit, as shown by the recent extension of the Form 6765 and instructions, and the research credit refund claim process.[85] While there have been recent difficulties at the IRS,[86] taxpayers would benefit from having certainty to help promote sustained economic growth, invest in the pool of highly skilled professionals within the United States, and fund future innovation through research credits.[87] ■

[80] IR-2025-69.

[81] For research credit issues, the IRS recommends taxpayers attach five of the 20 documents to the PFA request.

[82] *See* IRS, "Pre-Filing Agreement (PFA) Likely Suitable Issues and Documentation" (updated June 18, 2025).

[83] *See* IRS, "Pre-Filing Agreement Program" landing page (updated June 16, 2025).

[84] Andrew R. Roberson et al., "IRS Announces Improvements to Its Pre-Filing Agreement Program," Procedurally Taxing blog, July 2, 2025.

[85] *See* IR-2025-99.

[86] The government was shut down at the time that this article was drafted. While there was a short-term contingency plan in place to continue funding the IRS, taxpayers were uncertain of the effects the 2025 extended filing season and the upcoming 2026 filing season. These concerns were expressed through a comment letter issued by the AICPA to Bessent on Sept. 29, 2025.

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