



TaxNewsFlash

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Notice 2017-23: Interim guidance for making payroll tax credit election

The Treasury Department and IRS today released an advance version of Notice 2017-23 providing interim guidance for making the payroll tax credit election.

The Treasury Department and IRS are developing guidance to implement the payroll tax credit election available to certain small businesses under section 41(h) of the Internal Revenue Code to claim the payroll tax credit under section 3111(f). Sections 41(h) and 3111(f) allow a qualified small business to elect to apply a portion of the section 41(a) research credit for the tax year against the employer portion of the old-age, survivors, and disability insurance tax (social security tax) under the Federal Insurance Contributions Act. Sections 41(h) and 3111(f) are effective for tax years beginning after December 31, 2015.

Specifically, [Notice 2017-23](#) [PDF 53 KB] provides interim guidance regarding the term “qualified small business,” including the applicable guidance for determining gross receipts for purposes of section 41(h). This notice also provides interim guidance relating to the time and manner of making the payroll tax credit election and claiming the credit.

Significantly, the notice provides that the term “gross receipts” means gross receipts as determined under section 448(c)(3) (without regard to section 448(c)(3)(A)) and section 1.448-1T(f)(2)(iii) and (iv) of the Income Tax Regulations. The definition of gross receipts under section 41(c)(7) and section 1.41-3(c) does not apply for purposes of section 41(h). Therefore, gross receipts for purposes of the notice do not include an exclusion for de minimis gross receipts similar to that in Treas. Reg. 1.41-3(c) which provides that “gross receipts do not include amounts representing *** Amounts received by a taxpayer in a tax year that precedes the first taxable year in which the taxpayer derives more than \$25,000 in gross receipts other than investment income. For purposes of this paragraph (c)(2)(vi), investment income is interest or

distributions with respect to stock (other than the stock of a 20% owned corporation as defined in section 243(c)(2)).”

The Treasury Department and the IRS request comments on the interim guidance described in this notice and other issues affecting payroll tax credit elections that may require additional guidance. Comments are requested by July 17, 2017.

For further background information regarding potential abilities to use the research and development (R&D) credit to offset payroll taxes and alternative minimum tax, read a [2016 report](#) prepared by KPMG LLP: *What's News in Tax: Research Credit Made Permanent and New Potential Abilities to Use Credit to Offset AMT and Payroll Taxes*

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