



TaxNewsFlash

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Rev. Rul. 2023-8: Prior ruling relating to expensing of research and experimentation expenditures obsolete

The IRS today released an advance version of [Rev. Rul. 2023-8](#) [PDF 95 KB], which obsoletes Rev. Rul. 58-74 effective as of July 31, 2023, because there are insufficient facts in the ruling to properly analyze whether the taxpayer's failure to deduct certain research and experimentation (R&E) expenditures, when it deducted other R&E expenditures, constituted a method of accounting or an error.

Prior to amendment by Pub. L. No. 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA), section 174(a) permitted a taxpayer to currently deduct R&E expenditures (the "expense method"). If the expense method was adopted, it had to be used for all qualifying expenditures in the tax year adopted and for all subsequent years, unless the IRS Commissioner consented to a different method for all or part of the expenditures under former section 174(a)(3).

Rev. Rul. 58-74 provides that if a taxpayer adopted the expense method but failed to deduct expenses relating to the cost of obtaining a patent or other items of R&E expenditures for prior tax years to which the expense method is applicable, the taxpayer must file a claim for refund or amended return to deduct additional R&E expenditures in the year or years when the expenditures were paid or accrued. Rev. Rul. 58-74 further provides that the additional R&E expenditures cannot be treated as deferred and amortized under former section 174(b) or chargeable to capital account and subsequently amortized or written off upon abandonment of the project or projects because the Commissioner's consent to change a method of accounting was not obtained. Accordingly, the deduction for the additional R&E expenditures could be lost if the period of limitations on claims for credit or refund under section 6511 has expired and amended returns could not be timely filed.

The TCJA amended section 174 to provide that R&E costs incurred in tax years beginning after December 31, 2021, must be capitalized and amortized over five years if the research is performed in the United States and over 15 years if performed outside of the United States. The Treasury Department and the IRS are obsoleting Rev. Rul. 58-74 not because of the change in law under section 174, however, but because there are insufficient facts in the ruling to properly analyze whether the taxpayer's failure to deduct certain R&E expenditures constituted a method of accounting or an error.

- For example, Rev. Rul. 58-74 does not explain whether the taxpayer consistently treated the costs of obtaining a patent in determining its taxable income.
- Rev. Rul. 58-74 also fails to describe the cause and extent of the deviation in the treatment of certain R&E expenditures that were not deducted.
- If the facts demonstrate that a taxpayer has a change in method of accounting, then filing an amended return, refund claim, or administrative adjustment request (AAR) under section 6227 in reliance upon Rev. Rul. 58-74 would conflict with the statutory requirement that a taxpayer must secure the consent of the Commissioner to change a method of accounting.
- Thus, Rev. Rul. 58-74 is no longer determinative.

Because Rev. Rul. 2023-8 obsoletes Rev. Rul. 58-74 as of July 31, 2023, a taxpayer may still file a claim for refund, amended return, or AAR in reliance on Rev. Rul. 58-74 prior to that date.

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