



Securities Industry Association

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May 17, 2001

Internal Revenue Service
CC:M&SP:RU (TD 8930)
Room 5226
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Comments on Final Regulations relating to the Computation of the Credit for Increasing Research Activities and the Definition of Qualified Research Pursuant to Section 41 of the Internal Revenue Code

Dear Sir or Madam:

The Securities Industry Association (SIA)¹ appreciates the opportunity to submit our views on the final regulations that were published in the Federal Register on January 3, 2001,² relating to the computation of the credit for increasing research activities under section 41(c) of the Internal Revenue Code (the "Code") and the definition of qualified research under section 41(d) of the Code.³ We believe that the provisions in the regulations relating to the definition of internal-use software, the discovery test, and the documentation requirements should be substantially revised to accomplish the intent of Congress in providing this credit.

SIA is particularly concerned with the definition of internal-use software and its application to the securities industry because of the critical role technology has assumed in the securities industry. The final regulations seek to

¹ The Securities Industry Association brings together the shared interests of nearly 700 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of approximately 50-million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans. In the year 2000, the industry generated \$314 billion of revenue directly in the U.S. economy and an additional \$110 billion overseas. Securities firms employ approximately 770,000 individuals in the U.S. (More information about SIA is available on its home page: <http://www.sia.com>.)

² T.D. 8930.

³ See IRS Notice 2001-19, published in Internal Revenue Bulletin 2001-10 on March 5, 2001.

apply a new standard, referred to as the “computer services” standard. Unfortunately, this newly-created standard is unworkable, unnecessary, and ignores the role of technology in the provision of services in today’s economy. The final regulations, while acknowledging the existence of legislative history in this area, fail to properly capture the underlying intent of the legislative history and adapt the internal-use standard to the transformation that has taken place in the securities industry and the economy since 1986.

I. Internal-Use Software

A. The Final Regulations

The final regulations generally provide that software that is developed for use in providing noncomputer services to customers is internal-use software, and as a result, must meet a much higher threshold to qualify for the research tax credit. In contrast, the final regulations declare that software developed for use in providing computer services is not developed primarily for internal-use, and therefore, need not meet the higher threshold. Section 1.41-4(c)(6)(iv)(A) of the final regulations defines “computer services” as “services offered by a taxpayer to customers who do business with the taxpayer primarily for the use of the taxpayer’s computer or software technology. A taxpayer does not provide a computer service merely because customers interact with the taxpayer’s software.” Section 1.41-4(c)(6)(iv)(B) of the final regulations defines “noncomputer services” as “services offered by a taxpayer to customers who do business with the taxpayer primarily to obtain a service other than a computer service, even if such other service is enabled, supported, or facilitated by computer or software technology.”

In addition, the final regulations establish a new exception under which the development of certain internal-use software used to deliver noncomputer services to customers is not subject to the additional three-part test for internal-use software. Specifically, section 1.41-4(c)(6)(v) of the final regulations provides that certain software used to deliver noncomputer services will be treated as not being internal-use software if, at the time the research was undertaken --

- (A) The software is designed to provide customers a new feature with respect to a noncomputer service;
- (B) The taxpayer reasonably anticipated that customers would choose to obtain the noncomputer service from the taxpayer (rather than from the taxpayer’s competitors) because of those new features provided by the software; and
- (C) Those new features were not available from any of the taxpayer’s competitors.

B. Computer vs. Noncomputer Services

In developing this new standard for the provision of “computer services,” the writers of the final regulations focused on a portion of the legislative history to the Tax Reform Act of 1986 (“the 1986 Act”) that sought to clarify the creditability of software developed for a taxpayer’s “own internal-use” in its own business processes. That legislative history negatively infers that software developed by a taxpayer to provide services, particularly in the accounting, consulting or banking industries, is always internal-use software, and thus, subject to a higher standard. Specifically, the 1986 Conference Report provided that:

[R]esearch with respect to computer software that is developed by or for the benefit of the taxpayer primarily for the taxpayer’s own internal-use is eligible for the credit only if the software is used in (1) qualified research . . . undertaken by the taxpayer, or (2) a production process that meets the requirements for the credit. . . . Any other research activities with respect to internal-use software are ineligible for the credit except to the extent provided in Treasury regulations. Accordingly, the costs of developing software are not eligible for the credit where the software is used internally, for example, in general and administrative functions (such as payroll, bookkeeping, or personnel management) or in providing noncomputer services (such as accounting, consulting, or banking services), except to the extent permitted by Treasury regulations.⁴

The above legislative history describes the scope of so-called “internal-use software”. It does so by referring specifically to computer software developed “primarily for the taxpayer’s own internal-use”. This language is clearly intended to describe software developed primarily for the taxpayer’s own use in the operation of its own businesses.

The SIA believes that the final regulations fail to sufficiently recognize that the first sentence of the legislative history sets forth the scope of the term of art, referred to elsewhere in the legislative history as “internal-use software”. Thus, with the focus of the Committee Report language being generally on the taxpayer’s use of the software, the key to determining whether software is internal-use or not must focus on the underlying functionality of the software to the taxpayer. That is, it must focus on how the computer software will be used in the taxpayer’s business rather than the nature of the services provided by the taxpayer, e.g., financial vs. technology.

The SIA also believes that the purpose of the examples described in the same paragraph of the Committee Report was to identify specific services that, at the time (circa 1986), were supported only by computer software developed primarily for the service provider’s own use. The reference to “accounting, consulting, and banking” is merely illustrative of the types of services that did not involve computer software technology *at that time*.

⁴ H.R. Conf. Rep. No. 99-841 at II-73, 99th Cong. 2d Sess. (1986).

The last phrase of the 1986 Conference Report language clearly provides Treasury with the authority to reconsider the present-day relevance of the examples provided in the 1986 Conference Report. The SIA believes this regulatory authority must be utilized to reflect the technological revolution that has occurred in the service industries since the 1986 legislation. Congress believes that this is the case and twice expressed this belief in the late 1990s. Congress addressed this point because service industries were frequently developing computer software as an integrated part of the basic services provided to customers. In addition, service industries have themselves found that the services they provide through internally developed software are no different than the services provided through software developed by a technology company and then sold or licensed to a competing services company for use with its customers.

The additional support for Treasury's ability to utilize its regulatory authority in a nondiscriminatory way can be found in the legislative history accompanying the Tax and Trade Relief Extension Act of 1998 ("the 1998 Act") and the Ticket to Work and Work Incentives Improvement Act of 1999 ("the 1999 Act"). Specifically, the Conference Report to the 1998 Act provided that:

Lastly, the conferees observe the lack of clarity in the interpretation of the distinction between internal-use software, the costs of which may be eligible for the credit if additional tests are met, and other software. The conferees emphasize that application of the definition of internal-use software should fully reflect Congressional intent.⁵

In the 1999 Act the Conferees additionally provided that:

The conferees further note the rapid pace of technological advance, especially in service-related industries, and urge the Secretary to consider carefully the comments he has and may receive in promulgating regulations in connection with what constitutes "internal-use" with regard to software expenditures. The conferees also observe that software research, that otherwise satisfies the requirements of section 41, which is undertaken to support the provision of a service, should not be deemed "internal-use" solely because the business component involves the provision of a service.⁶

This latter legislative history clearly instructs the Treasury, when writing regulations, not to discriminate against service industries that may put most of their research dollars into the development of software which is part of the

⁵ H.R. Rep. No. 105-825, at 1549 (1998).

⁶ H.R. Conf. Rep. No. 106-478, at 132 (1999).

provision of a service rather than into the development of hardware or “computer services.”

C. Evolution of Technology in the Service Industries

The standards set forth in the final regulations for the treatment of internal-use software do not reflect the evolution of technology and its role in the securities industry, nor do they provide the flexibility necessary to adapt to the future. Over the last 15 years, the securities industry has undergone a technological revolution. Technological innovation in back-office functions, the use of technology in the delivery of services, and the technology imbedded in the services themselves, have become critical in meeting customer desires and needs as well as in meeting the demands of global competition and the retention of jobs in the U.S. Many companies have been acquired or gone out of business because they failed to invest in such technology. To meet these needs, service companies have transformed themselves into technology companies that provide services. David Pottruck, CEO of Schwab, recently said about his own company, “We’re a financial services company on the outside, but we’re a technology company on the inside.”

It is instructive to consider the financial services industry in more detail as an example. In 1986, securities firms used software solely to handle so-called back-office functions, including general ledger, payroll, fixed assets, and batch trading accounts. Customers of these institutions did not differentiate one securities firm from another based on the institutions’ level of technological development. Rather, they bought financial services based on proximity, convenience, fees, and relationships. In a securities firm, back-office software reconciled customer accounts based on the latest transaction, for example, but there was no need to do so instantaneously or even within the same working day. By the late 1980s and early 1990s, the research and development work of major securities firms led to the emergence of front office processes that enabled employees to support customer needs through automation of sales and trading systems, securities operations and clearance functions and securities analytic functions. These developments clearly created efficiencies, but they remained behind the scenes.

This changed dramatically by the mid-1990s. The role of technology in the securities industry began to evolve to the home office. Securities firms had created computer software that enabled customers to directly initiate and conduct their own financial service activities with the financial institutions, particularly at the institutional customer level. This became evident in several ways, including through dedicated networks, and most recently, over the Internet. Further technological innovation has created the ability for both retail and institutional customers to manipulate accounts, including trading on line, moving funds from one mutual fund investment to another, stress testing investment portfolios through powerful computer software driven analytics, examining investment

research information, etc., all conducted by accessing computer software developed by the securities firms, often in “real time”.

The software required to provide these services consists of a series of complex applications that stretch from inside the domain of the financial service provider all the way out to the customer’s home office. Every computer software application that forms a link in the rendering of the service to customers has become an inescapably integral part of the service provided to the customers themselves. Even the traditional routine function of reconciling a customer’s securities account now requires non-traditional instantaneous and flawless tracking because customers demand instant access to portfolio details. Securities firms and their customers must also have instant access to information to properly hedge their risks in today’s dynamic financial environment. It is unrealistic, impracticable, and unauditable to attempt to draw a line that differentiates any of these services into computer and noncomputer services.

Today, the financial services industry is on the brink of mobile office automation as the research efforts of securities firms are rapidly empowering customers to conduct business anywhere, anytime, and for anything the institution can support. Over the past 15 years, the computer services provided by financial organizations directly to their customers, both business-to-business (“B2B”) and business-to-customer (“B2C”), have become as important as the rapidly commoditized financial services that their back-room systems drive. Most services and products would be impossible without the software developed to deliver or support them.

The successful financial service organizations of the future will be those that are market leaders in using technology to scan, sense, innovate, and mutate information to provide innovation and adaptation to customer needs. The technologies required to support these market leaders will only emerge if financial service organizations invest the research and development funds necessary to bring these technologies from conceptual hypotheses to operational realities. Just as manufacturing organizations must perform research to develop new products, financial service organizations must perform software development research to provide the services necessary for their survival and prosperity.⁷

The business realities discussed above are ignored in a regulatory standard that seeks to differentiate between computer and noncomputer services, as is the case in the final regulations. Under the distinction contained in the final regulations, it seems clear that a technology company that provides services considered to be financial in nature, such as on-line trading or bill

⁷ Frank Schlier, Group Vice-President, Financial Services Industry Research and Advisory Services, Gartner. Mr. Schlier spoke on the subject “Financial Services Information Technology 1986-2001 Fifteen Years of Progress” at the Annual Federal Tax Policy Symposium hosted by the Tax Council Policy Institute during February 2001.

paying, would be interpreted as providing “computer services”, whereas a financial institution providing the very same services would be interpreted as providing noncomputer services. In order to avoid being treated as noncomputer services, a securities firm would be required to meet the new three-part exception for service providers. Both the computer vs. noncomputer standard and the newly created exception wrongly suggest that you look to the nature of the services provided, and not the underlying functionality of the software to the taxpayer, to determine whether or not the software is internal-use.

Not only is this standard unworkable, but it is in direct conflict with the 1999 legislative history, which states that, “research. . . undertaken to support the provision of a service should not be deemed ‘internal-use’ solely because the business component involves the provision of a service.”⁸ The distinctions drawn by the regulations fail to recognize that the development of new software that is integral to the provision of services is no less innovative than the development of the same software that might be utilized by a manufacturer or sold or licensed by a software developer. In addition, this standard puts taxpayers engaged in the provision of services at a competitive disadvantage with other computer or software companies.

D. A More Appropriate Test for Determining Whether Software is Internal-Use or Not

The proper test for determining whether software is internal-use or not should depend upon the underlying functionality of the software to the taxpayer, not the nature of the services being provided. This is consistent with the reality of the marketplace, the legislative history, and recent case law. Thus, if the software is integrally related to the provision of a product or service to a customer, it is not internal-use. In contrast, computer software developed for a taxpayer’s own internal-use in administering internal functions, such as payroll, does not directly impact the ability to provide a product or service to a customer. A payroll system primarily impacts the ability of a business to function internally. Thus, computer software developed to administer payroll is used primarily for internal-use and should accordingly be subject to the additional three-part test for internal-use software.

Under the “integrally related” test, for example, the development of computer software used to calculate accrued interest appearing on a monthly brokerage statement would be considered too remote in relation to the provision of a financial service. In contrast, development of computer software to provide a financial intermediary with real time calculations of yields on complex financial instruments to be used to allow the intermediary to price an instrument for sale to customers would be considered “integrally related” to the product or a service provided to the customer.

⁸ H.R. Conf. Rep. No. 106-478, at 132 (1999).

In addition, the internal-use test for computer software that is used by a securities firm should not depend upon who initiates the transaction, whether the transaction is initiated by the customer on the customer's home computer or initiated by the customer's verbal instructions to the securities firm. In either event, the computer software of the financial services firm is an integral part of the provision of products or services to its customers and should not be placed in the internal-use category.

To make the distinctions somewhat clearer, the SIA suggests that the regulations provide for certain types of software that would presumptively be internal-use software (assuming they are otherwise credit-eligible). These types of software would encompass software to carry on the basic internal functions of the company, including administrative functions, accounting and regulatory compliance, GAAP reporting, and record-keeping. It is important to note, however, that the above tests would nonetheless not be practical unless clear, workable standards were established for when "internal-use" software qualifies for research tax credits. All too often in practice, IRS agents, lacking such guidance, go no further and automatically disallow research tax credits once they have made a determination that computer software is primarily for "internal-use."

E. Additional Three-Part Test for Internal-Use Software

If software is used primarily for internal-use, the final regulations require taxpayers to meet the three-part high threshold of innovation test. Section 1.41-4(c)(6)(vi) of the final regulations provides that the high innovation test is met only if the taxpayer can establish that --

- (A) The software is innovative in that the software is intended to result in a reduction in cost, improvement in speed, or other improvement, that is substantial and economically significant;
- (B) The software development involves significant economic risk in that the taxpayer commits substantial resources to the development and there is a substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period; and
- (C) The software is not commercially available for use by the taxpayer in that the software cannot be purchased, leased, or licensed and used for the intended purpose without modifications that would satisfy the requirements of paragraphs (c)(6)(vi)(A) and (B) of this section.

The final regulations, we believe accurately, find that the first prong of the additional three-part test does not impose a separate high threshold of innovation requirement. However, SIA believes that the regulations should clarify that the innovativeness test does not require the discovery of information that is revolutionary. The standard should only require improvements that are, in effect, evolutionary. With respect to the economic risk test, SIA believes that the

regulations should clarify that it is appropriate to measure economic risk with respect to the total investment (including all section 174 expenses and capital investments) in all integrated projects, not just the qualified research expenditure's component of the investment. Finally, with respect to the commercial availability test, the SIA believes that the final regulations should acknowledge that while many taxpayers may start with a core commercially available product, the software can be quickly developed into something that is not commercially available.

II. Discovery Test

A. Existence of a Discovery Test

While we commend the IRS and Treasury for acknowledging that technological advancements by taxpayers need only be evolutionary and not revolutionary, we are troubled by the provisions of the final regulations that continue to put additional emphasis on the definition of the term "discovering information."

Section 41(d)(1)(B)(i) of the Code provides that in order to meet the definition of qualified research, an activity must be undertaken for the purpose of discovering information "which is technological in nature." Any suggestion that an additional test under section 41(d)(1)(B) of the Code exists that must be met relative to the type of discovery or the requisite level of information that must be discovered is not supported by a clear reading of the statute or the legislative history. By separately defining the term "discovering information" in section 1.41-4(a)(3) of the final regulations, the IRS and Treasury have, in effect, created an additional test not authorized by Congress.

It appears that this unintended test is a result of a reference to "common knowledge" in the 1998 Act. In the 1998 Act, Congress reaffirmed the scope of qualified research. In doing so, the legislative history provides that research activities, "intended to achieve a result that has already been achieved by other persons but is not yet within the common knowledge (e.g., freely available to the general public) of the field. . . ." are eligible for the research tax credit.⁹ The IRS and Treasury have taken this broad statement and improperly focused on the level of discovery and not on the type of information that is being sought in determining whether the research is qualified. We believe that Congress never intended to focus on the requisite level of discovery.

Furthermore, the first prong of the four-part test itself imposes a discovery test on taxpayers. Specifically, section 41(d)(1)(A) of the Code requires qualified research to meet the standards for deductibility under section 174 of the Code. In order for research to be deductible under section 174 of the Code, section

⁹ H. Conf. Rpt. 105-825, 105th Cong., 2d Sess., at 1548 (1998).

1.174-2(a)(1) of the regulations requires that the expenditure must (1) be incurred in connection with the taxpayer's trade or business, and (2) represent a research or experimental cost in the experimental or laboratory sense. Section 1.174-2(a)(1) further provides that, "[e]xpenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to *discover information* that would eliminate uncertainty concerning the development or improvement of a product." (Emphasis added).

Section 41(d)(1)(B) of the Code was never intended to impose an additional requirement that the research be undertaken for the purpose of discovering information. Rather, section 41(d)(1)(B) of the Code was intended to require that the activities undertaken pursuant to section 174 of the Code be technological in nature. If a taxpayer's activities meet the definition of qualified research under section 174 of the Code, the taxpayer has by definition, undertaken activities intended to "discover information." Thus, it is not necessary to impose an additional discovery test under section 41 of the Code. Congress never contemplated such a superfluous test.

B. The Common Knowledge of Skilled Professionals

As discussed above, we believe that Congress never intended to create an additional "discovery" test. If, however, the IRS and Treasury proceed with the application of a "discovery" test, we are concerned with the manner in which the term "discovering information" is defined in section 1.41-4(a)(3) of the final regulations. Specifically, we are concerned with how the term "common knowledge" is defined. Thus, if the discovery test is retained, the definition of "common knowledge" should be further refined.

The term "common knowledge" was first introduced in the legislative history to the 1998 Act. The 1998 Act provides as an example of information that is within the common knowledge of a field, information which is "freely available to the general public."¹⁰ The regulations do not adopt this example and provide little guidance as to when information is within the common knowledge. Section 1.41-4(a)(3)(ii) of the final regulations defines "common knowledge" as "information that should be known to skilled professionals had they performed, before the research in question is undertaken, a reasonable investigation of the existing level of information in the particular field of science or engineering." The SIA is concerned that this definition is so subjective that it will be subject to constant debate by IRS agents and taxpayers.

In addition, the definition of "common knowledge" contained in the final regulations still requires taxpayers to prove a negative. Under this standard, taxpayers will be forced to demonstrate in hindsight that the information sought exceeded, expanded, or refined the common knowledge of skilled professionals. A search done in hindsight could yield a significantly different result than one

¹⁰ Id.

done at the start of a project. Controversies over what information “should be known” and when and whether the “reasonable investigation” standard is met are sure to cause additional confusion and debate in the exam and audit process. Thus, it will be less clear whether the information is available to the general public and when it, in fact, became available to the general public. As discussed more fully below, the rebuttable and patent presumptions do little to shift this burden off of taxpayers.

The SIA believes that, because all research is unique, taxpayers should be given broader latitude in documenting that research exceeds, expands, or refines, the common knowledge of skilled professionals. In addition, as discussed more fully below, the burden of proving that information was within the common knowledge of skilled professionals at the time the research was undertaken should be placed on the IRS and not on taxpayers.

With respect to the definition of skilled professionals, the SIA commends the IRS and Treasury for clarifying that the regulations do not impose qualification requirements on the personnel that the taxpayer uses to conduct qualified research. It is not uncommon for personnel who perform the research to have obtained their expertise by other means. Thus, the regulations should continue to acknowledge that taxpayers should not be required to provide resumes in order to prove the requisite level of skill of its professionals.

C. Rebuttable Presumption

Section 1.41-4(a)(3)(v) of the final regulations provides that, if a taxpayer demonstrates with credible evidence that research activities were undertaken to obtain the information described in documentation prepared before or during the early stages of the research, and if that documentation also sets forth the basis for the taxpayer's belief that obtaining this information would exceed, expand, or refine the common knowledge of skilled professionals in the particular field of science or engineering, then the research activities are presumed to satisfy the discovery test. This rebuttable presumption would arise, however, only if the taxpayer cooperates with reasonable requests by the IRS for witnesses, information, documents, meetings and interviews.

SIA is concerned that the rebuttable presumption may do little to shift the burden of proof from the taxpayer to the IRS. SIA assumes that the intent of this presumption is to minimize costly disputes and serve as a practical means of ensuring that taxpayers with well-supported claims ultimately will be found to satisfy the discovery test. SIA strongly supports shifting the burden of proof to the IRS in order to relieve a large number of compliant taxpayers from the very difficult task of proving, *in hindsight*, that the information they sought was not within the common knowledge of skilled professionals. In order to ensure that the presumption serves its intended purpose, however, it may be necessary to give additional consideration to the proper balance for IRS requests for witnesses, information, documents, meetings and interviews. The risk is that in

some circumstances such requests could have the practical effect of nullifying the benefits of a presumption.

SIA is also concerned with the restrictive nature of the documentation requirement contained in the rebuttable presumption. Imposing such a requirement on taxpayers before or during the early stages of the research is not only burdensome, but in many instances, may be impossible. We believe that the rebuttable presumption should be more flexible in allowing taxpayers to document that information is not within the common knowledge of skilled professionals. Thus, taxpayers should be presumed to have met the burden for establishing the rebuttable presumption if the taxpayer has, at some point, documented the fact that the research is not within the common knowledge of skilled professionals.

D. Patent Presumption

Section 1.41-4(a)(3)(iv) of the final regulations provides that the issuance of a patent by the Patent and Trademark Office under the provisions of section 151 of title 35, United States Code is conclusive evidence that a taxpayer has obtained knowledge that exceeds, expands, or refines the common knowledge of skilled professionals. However, the issuance of such a patent is not a precondition for credit availability.

While the SIA commends the IRS for including the patent presumption, the final regulations provide that, even if a taxpayer meets the patent presumption, failure to meet the initial documentation requirements will result in a failure to meet the definition of qualified research. We believe that the patent presumption should not be dependent upon meeting the initial documentation requirements.

III. Documentation Requirement

Under the final regulations, taxpayers must prepare and retain written documentation before or during the early stages of the research project that describes the principal questions to be answered and the information that the taxpayer seeks to obtain which will exceed, expand, or refine the common knowledge of skilled professionals in the relevant field of science or engineering. Taxpayers also must comply with the general recordkeeping requirements of section 6001. This new contemporaneous documentation requirement is unsupported by the statute and is contrary to the legislative history. The 1999 Act specifically provided that:

The conferees also are concerned about the unnecessary and costly taxpayer record keeping burdens and reaffirm that eligibility for the credit

is not intended to be contingent on meeting unreasonable record keeping requirements.¹¹

The SIA believes that the new contemporaneous documentation requirement is overly burdensome and will be difficult for taxpayers, especially large multinational companies, to implement. In lieu of this requirement, Treasury should create a documentation standard that will avoid the need to create extensive new records and, at the same time, will provide the IRS with an appropriate level of documentation that it can effectively evaluate. We believe that any documentation requirement should not be imposed any earlier than the time at which the taxpayer is able to establish the means or uncertainty of the research.

In addition, the SIA believes that the documentation provision could be designed as an incentive provision and not a requirement. One way of achieving this goal would be to incorporate the documentation provision into the rebuttable presumption provision. Thus, if a taxpayer has contemporaneously documented the objectives of its research, the taxpayer could be deemed to have qualified the expenditures for the credit. The burden would then shift to the IRS to prove that the research did not qualify for the credit. To the extent taxpayers have failed to prepare contemporaneous documentation, they should still be permitted to prove that the expenditures qualify for the credit.

* * *

Thank you for your consideration of our comments. We look forward to working with you on this issue in the coming months.

Sincerely,

Saul M. Rosen
Chair, SIA's Committee on the Federal
Taxation of the Securities Industry

cc: The Honorable Mark Weinberger
Assistant Secretary (Tax Policy)
Department of Treasury

¹¹ H.R. Conf. Rep. No. 106-478, at 132 (1999).

The Honorable Charles O. Rossotti
Commissioner
Internal Revenue Service