

# WNTS Insight



## IRS drops intercompany gross receipts issue in research credit case

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In the latest pro-taxpayer development regarding whether a taxpayer may exclude intercompany transaction receipts from foreign members of its controlled group as part of the calculation of its section 41 research credit, the IRS recently filed a "Notice of No Objection and Objection to the Motion for Partial Summary Judgment on Research Credit Issues" that had been filed by the taxpayer (HP) in the Tax Court case of *Hewlett-Packard Co. v. Commissioner*.

The IRS filing states that the IRS has no objection to the granting of HP's motion, insofar as it relates to the following issue (footnotes omitted):

Whether petitioner (hereafter "HP"), in determining its section 41(c)(4) alternative incremental research credits ("AIRC") for tax years ended October 31, 1999 through October 31, 2003, may exclude amounts accrued from CFSs [HP's controlled foreign subsidiaries that were members of its controlled group of corporations within the meaning of section 41(f)(5)] in calculating section 41(c)(1)(B) average annual gross receipts ("AAGRs").

**Note:** The government did object to the portion of HP's Motion for Summary Judgment insofar as it related to whether gross receipts should include dividends, interest, rents, royalties, and other income accrued from *unrelated* parties in its calculation of AAGRs for the AIRC base years.

**Observation:** The new filing may reflect a concession by the IRS that the hazards of litigation on the intercompany gross receipts issue are significant. The IRS, however, has not to date issued general guidance on this issue.

For prior discussion, see WNTS Insight, "[Court rules that taxpayer correctly excluded receipts from foreign subsidiaries in calculating its research credit](#)," June 30, 2010, and WNTS Insight, "[IRS Appeals releases redacted settlement guidelines on research credit gross receipts issue](#)," June 21, 2010.

On September 30, PricewaterhouseCoopers will present a webcast titled, "Research tax credit uncertainty: A path forward," during which PwC research credit specialists will discuss this development, recent court decisions, and specific policies that would advance the goal of a stable U.S. tax code that promotes job creation and U.S. business growth. To register for this webcast, please go to:

<http://event.on24.com/eventRegistration/prereg/register.jsp?eventid=242805&sessionid=1&key=15D432E15795CF416644A752F6002C01>.

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