

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100090	10% Refundable Portion of Research Credit - Common Questions

State of Wisconsin
Department of Revenue

10% Refundable Portion of Research Credit

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. When does the 10% refundable portion of the credit begin?
2. Who may claim the 10% refundable portion of the credit?
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4. Which research credits are eligible for the 10% refundable portion of the credit?
5. How is the 10% refundable portion of the credit computed?
6. What schedule is used to compute the 10% refundable portion of the credit?
7. Is it possible to compute less than a 10% refundable portion of the credit?
8. What happens to the portion of the research credit that is not refundable?
9. Can I use prior year research credit carryforwards to compute the 10% refundable portion of the credit?
10. Can the current years unused research credit become refundable in future periods?
11. Can the refundable portion of the credit be shared with other members of the same combined group?
12. If a member of a combined group elects to share their research credit, are they required to use the research credit to offset their own tax before sharing?
13. Can I use a prior year research credit carryforward to offset current year's tax in order to claim the maximum 10% refundable portion of the research credit?

1. When does the 10% refundable portion of the credit begin?

2017 WI Act 59 created secs. 71.07(4k)(e)2., 71.28(4)(k), and 71.47(4)(k), Wis. Stats., effective for taxable years beginning on or after January 1, 2018.

2. Who may claim the 10% refundable portion of the credit?

An individual, a partner of a partnership, a shareholder of a tax-option (S) corporation, a member of a limited liability company, or corporation may claim the credit.

3. **Who may not claim the 10% refundable portion of the credit?**

Partnerships, limited liability companies, and tax-option (S) corporations may not claim the credit, but the eligibility and amount of credit are based on their payment of qualified research expenses in Wisconsin. A partnership, limited liability company, or tax-option (S) corporation computes the amount of credit that its partners, members, or shareholders may claim and provides that information to them. Partners, members of limited liability companies, and shareholders of tax-option corporations claim the credit in proportion to their ownership interests.

4. **Which research credits are eligible for the 10% refundable portion of the credit?**

The following research credits are eligible for the 10% refundable portion of the credit:

- Research credit for qualified activities
- Research credit for activities related to internal combustion engines
- Research credit for activities related to certain energy efficient products

5. **How is the 10% refundable portion of the credit computed?**

Up to 10% of the current year's research credit is refundable. The maximum refundable portion of the credit is computed by multiplying the current year's research credit by 10%. The refundable portion is the lesser of 1) the current year research credit remaining after subtracting the amount of current year credit used to offset tax, or 2) 10% of the current year research credit.

Example 1:

- Taxpayer computes a current year research credit of \$100,000
- Taxpayer uses \$50,000 of the current year research credit to offset tax
- The taxpayer computes the full 10% refundable portion of the credit as shown below:>

Example 2:

- Taxpayer computes a current year research credit of \$100,000
- Taxpayer uses \$95,000 of the current year research credit to offset tax
- The taxpayer computes the refundable portion of the credit at less than 10% maximum as shown below:

6. **What schedule is used to compute the 10% refundable portion of the credit?**

 Schedule R is used to compute the refundable portion of the research credit. Line 17 computes the 10% maximum refundable portion and line 19 determines the remaining credit available after offsetting the current year's tax liability. Line 20 determines the refundable portion based on the lesser of lines 17 and 19.

7. **Is it possible to compute less than a 10% refundable portion of the credit?**

Yes. The maximum credit available is equal to 10% of the current year's research credit. The allowable credit is the lesser of 1) 10% of the current year research credit or, 2) the current year research credit remaining after subtracting the amount of current year credit used to offset tax.

8. **What happens to the portion of the research credit that is not refundable?**

The nonrefundable portion of the research credit may be carried forward for up to 15 years, but may not be used to compute the 10% refundable portion of the credit in future taxable years.

9. Can I use prior year research credit carryforwards to compute the 10% refundable portion of the credit?

No. Prior year research credit carryforwards cannot be used in computing the 10% refundable portion of the credit. Sections 71.07(4k)(e)2., 71.28(4)(k)., and 71.47(4)(k)., Wis. Stats., provide that if the allowable amount of current year credit claimed under paragraphs (ad)4., 5, or 6., exceeds the tax due, up to 10% of the credit may be refunded.

10. Can the current years unused research credit become refundable in future periods?

No. Sections 71.07(4k)(e)2., 71.28(4)(k)., and 71.47(4)(k)., Wis. Stats., provide that if the allowable amount of current year credit claimed under paragraphs (ad)4., 5, or 6., exceeds the tax due, up to 10% of the credit may be refunded. Prior year research credit carryovers are not used to compute the current year research credit.

11. Can the refundable portion of the credit be shared with other members of the same combined group?

No. Section Tax 2.61(10)(b)., Wis. Adm. Code., provides that refundable credits computed by a combined group member shall be claimed on the combined return and refunded to the designated agent to the extent not used to offset the total tax liability reported on the combined return.

12. If a member of a combined group elects to share their research credit, are they required to use the research credit to offset their own tax before sharing?

Yes. Section 71.255(6)(c)1., Wis. Stats., provides that for each taxable year that a corporation is a member of a combined group and has an unused credit or credit carry-forward under s. 71.28(4) or (5) or 71.47(4) or (5), the corporation may, after using that credit or credit carry-forward to offset its own tax liability for the taxable year, use that credit or credit carry-forward to offset the tax liability of all other members of the combined group on a proportionate basis, to the extent such tax liability is attributable to the unitary business.

13. Can I use a prior year research credit carryforward to offset current year's tax in order to claim the maximum 10% refundable portion of the research credit?

Yes. Sections 71.07(4k)(e)2., 71.28(4)(k)., and 71.47(4)(k)., Wis. Stats., provide that if the allowable amount of current year credit claimed under paragraphs (ad)4., 5, or 6., exceeds the tax due, up to 10% of the current year credit not used to offset taxes may be refunded. Prior year research credit carryovers have no effect on the computation of the refundable portion of the credit.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 13, 2019: Sections 71.07, 71.28, 71.47 and 71.255, Wis. Stats., and sec. Tax 2.61, Wis. Adm. Code.

Laws enacted and in effect after December 13, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 13, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec.

73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

MS 5-77

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