

830 CMR: DEPARTMENT OF REVENUE

830 CMR 63.00: TAXATION OF CORPORATIONS

830 CMR 63.38M.42: Massachusetts Qualified Research Expense Credit

(1) Statement of Purpose, Outline of Topics, Effective Date.

- (a) Purpose of Regulation. 830 CMR 63.38M.42 explains the calculation of the ~~corporate excise credit for~~ Massachusetts research ~~expenses afforded by credit under~~ M.G.L. c. 63, § 38M for tax years beginning on or after January 1, 2015. See St. 2014, c. 287, §§ 54, 123 and St. 2014, c. 359, § 20. This regulation provides guidance for computation of the credit by a single corporation or by related corporations. It explains the limitations on the amount of the credit allowed in a taxable year, interaction of the credit with other credits and carryover of the credit. For tax years beginning before January 1, 2015, see 830 CMR 63.38M.1.

Massachusetts provides a credit for certain expenditures for research activity in Massachusetts. The Massachusetts research credit, in large part, is based on the research credit allowed under Internal Revenue Code (Code) § 41 as amended and in effect on August 12, 1991. The terms affecting the calculation of the Massachusetts research credit generally have the same meanings as under Code § 41. However, only expenditures for research activity conducted in Massachusetts are taken into account in the calculation of the Massachusetts research credit.

For tax years beginning prior to January 1, 2015, there was a single method for calculating the Massachusetts research credit. The amount of the credit was 10% of the difference between the current year's qualified research expenses and a "base amount" as defined under Code § 41(c)(1), subject to a "minimum base amount" as specified in Code § 41(c)(2), plus 15% of basic research payments for the taxable year. The base amount as defined in Code § 41(c)(1) was calculated using a percentage tied to research expenditures relative to gross receipts for a five-year period. Code § 41(c)(3) provided a fixed-base percentage of 3% for start-up companies.

For tax years beginning on or after January 1, 2015, there are two methods for calculating the Massachusetts research credit. One method is a modification of the pre-2015 method. Under this method the amount of the credit is still 10% of the difference between the current year's Massachusetts qualified research expenses and a base amount plus 15% of the Massachusetts basic research payments for the taxable year. The difference from the pre-2015 method is the use of a base amount that, subject to the minimum base amount limitation, decouples from the base amount in Code § 41(c)(1). As a consequence of this change, the calculation of the credit is no longer tied to research expenses and gross receipts for a fixed 5-year period. Additionally, after January 1, 2015, there is no set fixed-based percentage for start-up companies under this method.

The second calculation method for tax years beginning on or after January 1, 2015 is similar to the calculation of the federal alternative simplified credit under Code § 41(c)(5). Under this second method, the amount of the credit is generally a

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percentage of the difference between the corporation's qualified research expenses for the current taxable year and 50% of the corporation's average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined. The rate used to calculate the credit will be phased in over a 7-year period. For purposes of the simplified method, the terms affecting the calculation of the credit have the same meanings as under Code § 41 as amended and in effect on January 1, 2014.

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(b) Outline of Topics. Following is a list of sections contained in 830 CMR 63.38M.4~~2~~.

- (1) Statement of Purpose, Outline of Topics, Effective Date
- (2) Definitions
- (3) General
- (4) Calculation of the Massachusetts Qualified Research Expenses~~Expense Credit~~
- (5) Massachusetts Qualified Research Base Amount~~Expenses~~
- (6) Massachusetts Qualified Research Base Amount
- ~~(7) Massachusetts Basic Research Payments~~
- ~~(7) Controlled Groups and Entities Under Common Control~~
- ~~(8) (8) Calculating the Massachusetts Qualified Research Expense Credit Using the Alternative Simplified Method~~
- ~~(9) Aggregated Groups~~
- ~~(10) Limitations on the Credit~~
- ~~(11) Interaction with Other Credits~~
- ~~(12) Carryover of Unused Credit~~
- ~~(13) Mergers and Changes of Ownership~~
- ~~(14) Combined Groups~~
- ~~(15) Election to Calculate Massachusetts Qualified Research Expense Credit Separately for Defense-Related Activities and Other Qualified Activities~~
- ~~(16) Recordkeeping and Accounting Requirements~~

(c) Effective Date. ~~This regulation, 830 CMR 63.38M.4 generally applies to expenses incurred on or after January 1, 1991. The election described in 830 CMR 63.38M.1(13) may be made for taxable years beginning on or after January 1, 1995. Changes in the effect of the election to use Massachusetts gross receipts described in 830 CMR 63.38M.1(5)(d)3., are generally effective for~~2 shall apply to tax years beginning on or after January 1, 1997~~2015~~. For tax years beginning before January 1, 2015, see 830 CMR 63.38M.1.

(2) Definitions. For purposes of this regulation, 830 CMR 63.38M.4~~2~~, the following terms shall have the following meanings, unless the context requires otherwise:

Aggregated Group, two or more corporations that are members of the same controlled group, as defined by Code § 41(f)(5), whether or not doing business in Massachusetts, or two or more entities, whether or not incorporated and whether or not doing business in Massachusetts, that are under common control, as defined by Treas. Reg. §
~~Aggregated group, a group of entities required to aggregate their activities under 830 CMR 63.38M.1(7), below, for purposes of determining the credit.~~

1.41-6(a)(3)(iii).

Basic Research, any research, the payments for which, are basic research payments under Section Code § 41(e) of the Code.

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Code, the Internal Revenue Code of the United States as amended and in effect on August 12, 1991, unless otherwise specified.

Combined Group, a combined group as defined in 830 CMR 63.32B.2(2).

Corporation, a business corporation organized under or subject to within the meaning of M.G.L. c. 156B, and subject to the excise imposed by M.G.L. c. 63, § 32, or a corporation, association, or organization established under laws other than those of Massachusetts, and subject to the excise imposed by M.G.L. c. 63, § 39, 30(1).

Credit or Massachusetts credit~~Credit~~, the credit for research expenses allowed by M.G.L. c. 63, § 38M, unless otherwise specified, as ~~added~~amended by St. ~~1994~~2014, c. ~~476, § 6287, § 54, and as further amended by St. 2014, c. 359, § 20.~~

Credit Year, the taxable year for which the credit is being determined.

Defense-Related Activities, any activity carried out in Massachusetts, relating to the business of researching, developing and producing for sale, pursuant to a contract or subcontract, of any arm, ammunition or implement of war designated in the munitions list published pursuant to 22 U.S.C. 2778, but only to the extent that such property is specifically designed, modified, or equipped for military purposes, or equipment for the National Aeronautics and Space Administration.

Federal Credit, the credit against the federal income tax allowed by SectionCode § 38(b)(4) of the Code, as determined under SectionCode § 41(a) of the Code.

Partnership, an entity that is classified for the taxable year as a partnership for federal income tax purposes.

Qualified Research, any research, the expenses related to which are qualified research expenses under SectionCode § 41(b) of the Code.

Research facility located~~Facility Located~~ in Massachusetts, a site, physically located in Massachusetts used to conduct qualified or basic research.

(3) General.

(a) ~~Computation of Credit. The Massachusetts credit for research expenses for the taxable year shall be an amount equal to the sum of the following amounts:~~

1. ~~Ten percent of the excess, if any, of Massachusetts qualified research expenses for the taxable year, as determined under 830 CMR 63.38M.1(4), below, over the Massachusetts qualified research base amount, as determined under 830 CMR 63.38M.1(5), below, plus~~

2. ~~Fifteen percent of Massachusetts basic research payments for the taxable year, as determined under 830 CMR 63.38M.1(6), below.~~

~~(b) Eligibility for the Credit. The Massachusetts credit for research expenses is available only to all domesticbusiness corporations subject to tax under M.G.L. c. 63, § 32, and all foreign corporations subject to tax under M.G.L. c. 63, § 39.~~

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~~(c) Eligible Expenses. The credit applies only to research expenses incurred on or after January 1, 1991.~~

~~(b) (d) Effect on Net Income. In determining net income for a taxable year under M.G.L. c. 63, § 30.4, the deduction for research expenses otherwise allowable for the credit year, without regard to Code § 280C(c), shall be reduced by the amount of credit determined pursuant to M.G.L. c. 63, § 38M(a) or (b).~~
~~⇒ S Corporations. S corporations may apply the credit against their corporate excise liability under the non-income measure or, if applicable, the income measure of the corporate excise. The credit does not flow through to the individual shareholders of an S corporation.~~

~~(f) Unincorporated Flow-Through Entities. Unincorporated flow-through entities, such as partnerships and joint ventures, shall be treated as flow-through entities for purposes of determining the credit, unless the aggregation provisions of 830 CMR 63.38M.1(7), below, require otherwise. c) Partnerships. All amounts relevant to the calculation of the credit that are paid or received by such entities a partnership shall be attributed to the owners of the entities partners in accordance with Section Code § 704 of the Code, as amended and in effect for the taxable year, and shall be taken into account in determining the credit for the partner's taxable year during which the taxable year of the unincorporated flow-through entity partnership ends.~~

~~(d) Effect on Net Income. In determining net income for a taxable year under M.G.L. c. 63, § 30.4, the deduction for research expenses otherwise allowable for the credit year, without regard to Code § 280C(c), shall be reduced by the amount of credit determined pursuant to M.G.L. c. 63, § 38M(a) or (b).~~

~~(f) Accounting Rules. For all purposes under this regulation, 830 CMR 63.38M.12, in determining when a research expense is incurred, corporations a corporation shall use the same method of accounting as they use it uses to compute the federal research credit under Section Code § 41 of the Code.~~

(4) Calculation of the Massachusetts Qualified Research Expense Credit.

~~Unless the corporation calculates the credit using the alternative simplified method in 830 CMR 63.38M.2(8), the Massachusetts credit for research expenses for the taxable year shall be an amount equal to the sum of the following amounts:~~

~~(4)(a) 10% of the excess, if any, of (i) Massachusetts qualified research expenses for the taxable year, as determined under 830 CMR 63.38M.2(5), over (ii) the Massachusetts qualified research base amount, as determined under 830 CMR 63.38M.2(6); plus~~

~~(b) 15% of Massachusetts basic research payments for the taxable year, as determined under 830 CMR 63.38M.2(7).~~

(5) Massachusetts Qualified Research Expenses.

(a) General. A corporation's Massachusetts qualified research expenses for a taxable year are those expenses that meet ~~both~~ all of the following requirements:

1. The expenses must be qualified research expenses under Code § 41(b) of the Code; and

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2. The expenses must have been incurred for research activity conducted in Massachusetts; ~~and~~

3. ~~The expenses must be incurred during a tax year beginning on or after January 1, 2015.~~

- (b) Research Activity Conducted in Massachusetts. Expenses incurred for research activity conducted in Massachusetts are:

1. Wages. Wages paid for qualified services, as defined by SectionCode § 41(b)(2)(B) of the Code, performed in Massachusetts;
2. Supplies. Amounts paid for supplies, as defined by SectionCode § 41(b)(2)(C) of the Code, used or consumed in Massachusetts in conducting qualified research;
3. Computer fees. Amounts paid for the right to use computers located in Massachusetts in the conduct of qualified research that takes place in Massachusetts, to the extent such amounts are treated as in-house research expenses under SectionCode § 41(b)(2)(A)(iii) of the Code; ~~and~~
4. Contract research expenses. ~~Sixty-five percent~~65% of amounts paid to other persons as contract research expenses, as defined by SectionCode § 41(b)(3) of the Code, to the extent attributable to research activity conducted at a research facility located in Massachusetts.

Where such expenses relate to amounts paid for services performed both within and outside Massachusetts or tangible personal property used both within and outside Massachusetts, the amount of the expense must be prorated between Massachusetts and non-Massachusetts activity based on the ratio of days the service provider or tangible personal property was employed in research in Massachusetts to the total number of days the service provider or tangible personal property was employed in research both within and outside Massachusetts.

~~(56)~~ Massachusetts Qualified Research Base Amount.

- (a) General. ~~The~~For purposes of calculating the credit under 830 CMR 63.38M.2(4), the Massachusetts qualified research base amount is the product of the following amounts:

1. The Massachusetts fixed-base ~~percentage ratio, as computed under 830 CMR 63.38M.2(6)(c),~~ and
2. The average annual gross receipts of the corporation, ~~as computed under 830 CMR 63.38M.2(6)(d),~~ for the ~~four~~4 taxable years preceding the ~~taxable year for which the credit is being determined, as computed under 830 CMR 63.38M.1(5)(d), below~~year.

- (b) Minimum Massachusetts Qualified Research Base Amount. Notwithstanding ~~the provisions of 830 CMR 63.38M.1(56)(a), above,~~ in no event shall the Massachusetts qualified research base amount for the ~~taxable year for which the credit is being~~

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~~determined year~~ be less than 50 percent of the Massachusetts qualified research expenses as computed for the ~~taxable credit~~ year under 830 CMR 63.38M.4(4)(5)(a), above.

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(c) Massachusetts Fixed-Base ~~Percentage Ratio~~.

1. General rule. ~~Except as provided below~~ For purposes of 830 CMR 63.38M.2(6)(a)1, the Massachusetts fixed-base ~~percentage ratio generally~~ is determined by dividing the corporation's ~~aggregate average~~ Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.4(4)(a), above, for all taxable years beginning after December 31, 1983, 2(5) for the third and before January 1, 1989, fourth taxable years preceding the credit year by the corporation's ~~aggregate average annual~~ gross receipts for such taxable years, as computed under 830 CMR 63.38M.4(5)(6)(d), below, for the third and fourth taxable years preceding the credit year. However, in no event shall the Massachusetts fixed-base ~~percentage ratio~~ exceed 16 percent. ~~Massachusetts fixed-base percentage shall be rounded to the nearest 1/100 of 1 percent. %.~~

~~2. Start-up companies. If there are fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which the corporation had both (i) gross receipts, computed under Section 41(c)(3)(A) of the Code, attributable to Massachusetts sales, or, in the case of a corporation that makes the election to use federal gross receipts under 830 CMR 63.38M.1(5)(d), gross receipts, computed under Section 41(c)(3)(A) of the Code, whether or not attributable to Massachusetts sales, and (ii) Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.1(4)(a), above, the Massachusetts fixed base percentage is three percent.~~

~~3. 2. Inadequate Records. If a corporation cannot compute the Massachusetts fixed-base ~~percentage ratio~~ as required by 830 CMR 63.38M.4(5)(a)1, above, 2(6)(c)1 due to inadequate accounts and records for the base period, the Massachusetts fixed-base ~~percentage ratio~~ is sixteen percent. 16%.~~

3. Insufficient Gross Receipts. If a corporation cannot compute the Massachusetts fixed-base ratio because it has no gross receipts as computed under 830 CMR 63.38M.2(6)(d) in either the third or fourth taxable years preceding the credit year, the corporation shall compute its credit using the alternative simplified method under 830 CMR 63.38M.2(8). For example, a corporation that has been in existence for one year would be required to compute its credit using the alternative simplified method under 830 CMR 63.38M.2(8).

(d) Gross receipts.

1. General. For purposes of 830 CMR 63.38M.4(5)(6)(a)2, the average annual gross receipts of the corporation for the four taxable years preceding the ~~taxable year for which the credit is being determined year~~ shall be computed in the same manner as required under ~~Section Code § 41(c)(1)(B) of the Code, and for purposes of 830 CMR 63.38M.1(5)(c)1, above, aggregate gross receipts for the base period shall be determined in the same manner as required under Section 41(c)(3)(A) of the Code.~~ Gross receipts may be reduced by returns and allowances as allowed under ~~Section Code § 41(c)(5) of the Code-7).~~

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~~42. Election to useUse Massachusetts Gross Receipts. Notwithstanding the provisions of this subsection, 830 CMR 63.38M.1(5)(d)1, a corporation may elect to compute gross receipts using only those gross receipts attributable to Massachusetts sales as determined under 830 CMR 63.38M.2(6)(d)5, provided that the election shall apply to both the computation of the average annual gross receipts for purposes of 830 CMR 63.38M.1(5)(a)2, and aggregate gross receipts for purposes of 830 CMR 63.38M.1(5)(c)1.~~

~~2. Method of Election. The election may be made when filing the return for the first taxable year for which the credit is claimed and must be made thereafter in accordance with 830 CMR 63.38M.1(5)(d)3. The election generally may not be made retroactively on an amended return or claim for abatement. However, subject to the limitations in M.G.L. c. 62C, § 37, and 830 CMR 62C.37.1, a corporation may make an election on an amended return for the earliest taxable year within that limitation period provided that the corporation was eligible for the credit for that taxable year and did not claim the credit on the return for that taxable year or any prior year. Corporations shall indicate their election by checking the appropriate box on Schedule RC, Research Credit or RC-A, Research Credit-Aggregation.~~

~~3. Election Effective for Three Taxable Years.~~

~~a. Generally a corporation will be bound by its choice to compute the credit using Massachusetts gross receipts or federal gross receipts for three consecutive taxable years commencing with the year in which the choice is made. Thereafter, the corporation may alter its choice prospectively in any subsequent taxable year, provided that any change in method shall be binding for the three year period commencing with the year of the change.~~

~~b. If a corporation first claimed the credit for any taxable year commencing before January 1, 1997, it may change its method prospectively, as provided in 830 CMR 63.38M.1(5)(d)3.a., in a taxable year commencing on or after January 1, 1997, provided that it used (or was bound by) the previous method for at least three taxable years. A corporation may not change its method for any taxable year commencing before January 1, 1997.~~

~~c. Any change of method permitted under 830 CMR 63.38M.1(5)(d)3. must be made on the return for the taxable year in which the change will take effect and may not be revoked or retroactively altered by filing an amended return or claim for abatement. However, in order to assist taxpayers who may have filed their 1997 returns prior to the promulgation of 830 CMR 63.38M.1 as amended, a corporation that is otherwise eligible to do so may change its method for its taxable year beginning during the 1997 calendar year either on its original return for that year or by filing an amended return for such taxable year on or before the due date, determined without regard to extensions, of the return for the next taxable year.~~

~~3. Method of Election. Corporations shall indicate their election in the manner prescribed by the Commissioner. The election is binding for the taxable year for which it is made and may not be changed on an amended return or an abatement application.~~

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4. Aggregated groups. All members of an aggregated group, as defined by 830 CMR 63.38M.4(7)(b)2(2), must compute gross receipts in the same manner. If the group elects to base the computation of the credit on Massachusetts gross receipts, the election is binding on all members ~~in subsequent taxable years as provided in 830 CMR 63.38M.1(5)(d)3.~~ Entities that are members of an aggregated group ~~when in a year for which~~ an election is made shall ~~continue to~~ be bound by the election for the ~~three~~ taxable year ~~period commencing with for which~~ the year of the change, whether or not they remain part of the group. ~~However, when an entity leaves an aggregated group and in any subsequent taxable year becomes a member of a new aggregated group, the entity shall compute gross receipts in the same manner as the new aggregated group election is made.~~
5. Massachusetts gross receipts. Gross receipts attributable to Massachusetts sales for any taxable year shall include all gross receipts as computed under 830 CMR 63.38M.4(52(6)(d), that are included in the numerator of the corporate excise apportionment sales factor under M.G.L. c. 63, § 38(f), as determined for the taxable year in which the gross receipts are received or deemed received under M.G.L. c. 63. For purposes of determining gross receipts attributable to Massachusetts sales under 830 CMR 63.38M.4(52(6)(d)5., the throwback rule of M.G.L. c. 63, § 38-(f)(2) shall apply. In the case of an entity that is a member of a combined group, gross receipts attributable to Massachusetts shall be the sales included in the numerator of the entity's corporate excise apportionment sales factor as determined under 830 CMR 63.32B.2(7).

~~(e) Proration of Massachusetts Qualified Research Base Amount. For taxable years beginning before January 1, 1991, and ending before December 31, 1991, only, the Massachusetts qualified research base amount shall be multiplied by a fraction, the numerator of which is the number of days in such taxable year beginning on or after January 1, 1991, and the denominator of which is the total number of days in such taxable year.~~

(6)(7) Massachusetts Basic Research Payments.

- (a) General. ~~For purposes of 830 CMR 63.38M.2(4),~~ Massachusetts basic research payments taken into account ~~for purposes of 830 CMR 63.38M.1(3)(a)2., above,~~ shall be equal to the excess of ~~such~~all Massachusetts basic research payments for the taxable year over the Massachusetts base period amount.
- (b) Base Period. For purposes of determining Massachusetts basic research payments, the base period is the ~~three~~3 taxable year period ending with the taxable year immediately preceding the first taxable year of the corporation beginning after December 31, 1983. In all instances the base period determined under this provision, 830 CMR 63.38M.4(62(7)(b), will be identical to the base period determined for federal tax purposes under ~~Section Code § 41(e)(7)(B) of the Code.~~
- (c) Massachusetts Basic Research Payments. A corporation's Massachusetts basic research payment for a taxable year ~~are~~is the total of those expenses that are basic research payments for the taxable year under ~~Section Code § 41(e)(2) of the Code.~~, and that relate to basic research activity conducted in Massachusetts.

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1. Basic research activity conducted in Massachusetts. Basic research activity is conducted in Massachusetts to the extent that it is performed at a research facility located in Massachusetts, regardless of whether the organization conducting the research is organized under the laws of Massachusetts or another jurisdiction. Where a basic research project is conducted jointly at research facilities located within and outside Massachusetts, Massachusetts basic research payments include only the payment attributable to the portion of the project conducted within Massachusetts, determined by specific accounting.
 2. Field research outside Massachusetts. Where a basic research project involves field research conducted outside Massachusetts, Massachusetts basic research payments include expenses attributable to the field research only to the extent that the results of the field research are used in basic research conducted at a research facility located in Massachusetts. Where the results of field research will be used at research facilities both within and outside Massachusetts the expenses attributable to the field research must be apportioned to Massachusetts using a fraction, the numerator of which is the number of research facilities located in Massachusetts at which the results of the field research will be used, and the denominator of which is the total number of all research facilities at which the results will be used.
- (d) Massachusetts Base Period Amount. The Massachusetts base period amount is the sum of the following amounts:
1. The minimum Massachusetts basic research amount, plus
 2. The Massachusetts maintenance of effort amount.

~~For taxable years beginning before January 1, 1991, and ending before December 31, 1991, only, the Massachusetts base period amount shall be multiplied by a fraction, the numerator of which is the number of days in such taxable year beginning on or after January 1, 1991, and the denominator of which is the total number of days in such taxable year.~~

- (e) Minimum Massachusetts Basic Research Amount.
1. General. The minimum Massachusetts basic research amount is an amount equal to the greater of the two following amounts:
 - a. ~~One percent~~1% of the average of the sum of the amounts paid or incurred during the base period for (i) any in-house research expenses as determined for the taxable year under ~~Section Code § 41(e)(4)(A)(i)(I) of the Code~~ to the extent such expenses are attributable to research activity conducted in Massachusetts under 830 CMR 63.38M.4~~(42(5)(b), above,)~~ and (ii) any contract research expenses as determined for the taxable year under ~~Section Code § 41(e)(4)(A)(i)(II) of the Code~~ to the extent such expenses are related to research activity conducted in Massachusetts under 830 CMR 63.38M.4~~(42(5)(b), above,);~~ or
 - b. The amount paid by the corporation for basic research during the base period that was treated as contract research expenses during the base period under

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the Code as in effect during the base period, as determined under ~~Section Code § 41(e)(4)(A)(ii) of the Code~~ as amended and in effect on August 12, 1991, to the extent that such amounts were paid for research activity conducted in Massachusetts under 830 CMR 63.38M.4(62(7)(c), ~~above~~).

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2. Floor amount. In the case of a corporation that either (i) was not in existence for at least one taxable year (other than a short taxable year) during the base period, or (ii) had no Massachusetts basic research payments, as determined under 830 CMR 63.38M.4(62(7)(c), ~~above~~), during the base period, the minimum Massachusetts basic research amount shall not be less than 50 ~~percent~~% of the Massachusetts basic research payments for the taxable year for which the credit is being determined.
3. Inadequate records. If a corporation cannot compute the Massachusetts minimum basic research amount as required by this provision, 830 CMR 63.38M.4(62(7)(e), due to inadequate accounts and records for the base period, the Massachusetts minimum basic research amount is 50 ~~percent~~% of the Massachusetts basic research payments for the taxable year for which the credit is being determined.
- (f) Massachusetts Maintenance-of-Effort Amount. The Massachusetts maintenance-of-effort amount for a taxable year is determined by (i) multiplying the average of the nondesignated university contributions, as defined by ~~Section Code § 41(e)(5)(B) of the Code~~, paid to organizations organized under the laws of Massachusetts during the base period, by the cost-of living adjustment, as defined by ~~Section Code § 41(e)(5)(C) of the Code~~, and (ii) reducing the resulting amount, but not below zero, by the amount of nondesignated university contributions as defined by ~~Section Code § 41(e)(5)(B) of the Code~~, paid by the corporation to organizations organized under the laws of Massachusetts during the taxable year for which the credit is being determined.

~~(7) Controlled Groups and Entities Under Common Control.~~

~~(8) Calculating the Massachusetts Qualified Research Expense Credit Using the Alternative Simplified Method~~

- (a) General. ~~Two or more corporations that are~~ Rule. In lieu of the credit calculation in the provisions of 830 CMR 63.38M.2(4), a corporation may compute its credit using the alternative simplified method under 830 CMR 63.38M.2(8). A corporation computing its credit using the alternative simplified method for a taxable year must indicate its use of such method when filing the original return for the taxable year and not on an amended return or an abatement application.
- (b) Calculation of the Credit. If the corporation computes its credit using the alternative simplified method under 830 CMR 63.38M.2(8), the credit is calculated as follows.
 1. For calendar years 2015, 2016, and 2017, the amount of the credit shall be equal to 5% of the excess, if any, of Massachusetts qualified research expenses for the taxable year, as determined under 830 CMR 63.38M.2(5), over 50% of the corporation's average qualified research expenses for the 3 taxable years preceding the credit year.

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2. For calendar years 2018, 2019, and 2020, the amount of the credit shall be equal to 7.5% of the excess, if any, of Massachusetts qualified research expenses for the taxable year, as determined under 830 CMR 63.38M.2(5), over 50% of the corporation's average qualified research expenses for the 3 taxable years preceding the credit year.

3. For calendar years beginning on or after January 1, 2021, the amount of the credit shall be equal to 10% of the excess, if any, of Massachusetts qualified research expenses for the taxable year, as determined under 830 CMR 63.38M.2(5), over 50% of the corporation's average qualified research expenses for the 3 taxable years preceding the credit year.

(c) Insufficient Qualified Research Expenses. If a corporation computing its credit using the alternative simplified method under 830 CMR 63.38M.2(8) did not have qualified research expenses in any 1 of the 3 taxable years preceding the credit year, the amount of the credit is equal to 5% of the corporation's qualified research expenses for the credit year. For example, a company that has been in existence for less than 3 years would use this method to calculate its credit.

(d) Inadequate Records. If a corporation had qualified research expenses for the 3 taxable years preceding the credit year, but does not have adequate accounts or records of those expenses, then the corporation must calculate the credit under 830 CMR 63.38M.2(4). For example, a corporation with expenses in each of the 5 preceding taxable years that lacks adequate records of those expenses would calculate the credit under 830 CMR 63.38M.2(4) using the fixed-base ratio provided for in 830 CMR 63.38M.2(6)(c)(1).

(9) Aggregated Groups.

(a) General. An aggregated group is required to compute a single credit for the entire aggregated group in the manner required by 830 CMR 63.38M.2(9)(c) and must then allocate the amount of the credit among the members of the same-controlled group, as defined by Section 41(f)(1)(A) of the Code, whether or not aggregated group that are corporations doing business in Massachusetts, must aggregate their activities as in the manner required by 830 CMR 63.38M.1(7)(b)-(i), below, for purposes of determining the credit. In addition, two or more entities, whether or not incorporated and whether or not doing business in Massachusetts, that are under common control, as defined by Section 41(f)(1)(B) of the Code, must aggregate their activities as required by 830 CMR 63.38M.1(7)(b)-(i), below. 2(9)(g). The credit allowable to a corporation subject to this provision, 830 CMR 63.38M.4(7)(a)2(9), is its share of the credit allowable to the entire aggregated group, determined under 830 CMR 63.38M.1(7)(b)-(i), below.

(b) Aggregated Groups. An aggregated group is a group of related entities that are required to aggregate their activities with each other under 830 CMR 63.38M.1(7)(a), above. Aggregated groups must compute a single aggregated credit for the entire group in the manner required by 830 CMR 63.38M.1(7)(e), below, and must then allocate the amount of the aggregated credit in the manner required by 830 CMR 63.38M.1(7)(i), below, among the members of the aggregated group that are corporations doing business in Massachusetts. In determining the amount of the aggregated credit 2(9)(c)-(f). In determining the amount of the credit for the

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aggregated group, all relevant expenses, payments, and receipts relating to transactions between members of an aggregated group shall be ~~adjusted to reflect the fair market value of property and services sold or received~~disregarded.

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~~(c) Certain Unincorporated Flow-Through Entities. Any unincorporated flow-through entity, such as a partnership or joint venture, whether or not a member of an aggregated group, that is owned to any extent by a member of an aggregated group, shall be treated as a flow-through entity for purposes of determining the aggregated credit.~~ (b) Partnerships. All amounts relevant to the calculation of the credit that are paid or received by ~~such an entity shall a partnership, whether or not a member of the aggregated group, shall be treated as paid or received, as the case may be attributed to, by~~ the owners of the entity ~~as provided in 830 CMR 63.38M.1(3)(f), above. The separate existence of such entities shall be ignored for purposes of computing and allocating the aggregated credit.~~

~~(d) Other Unincorporated Entities. Any unincorporated entity that is a member of an aggregated group and is not treated as a flow-through entity under proportion to their interests in the provisions of 830 CMR 63.38M.1(7)(c), above, shall be treated as a separate entity for purposes of computing and allocating the aggregated credit.~~ partnership.

(e) Computation of the Credit for an Aggregated Credit Group. The ~~aggregated~~ credit for research expenses for the taxable year shall be an amount equal to the sum of the following amounts:

- ~~1. Ten percent 10% of the excess, if any, of Massachusetts aggregated qualified research expenses for the taxable year, as determined under 830 CMR 63.38M.1(7)(f), below, 2(9)(d) over the Massachusetts aggregated qualified research base amount, as determined under 830 CMR 63.38M.1(7)(g), below, 2(9)(e) plus~~
2. ~~Fifteen percent~~15% of Massachusetts aggregated basic research payments for the taxable year, as determined under 830 CMR 63.38M.1(7)(h), below, 2(9)(f).

(f) Aggregated Massachusetts Qualified Research Expenses. Aggregated Massachusetts qualified research expenses is the sum of the Massachusetts qualified research expenses, determined under 830 CMR 63.38M.1(4), above, 2(5), of each member of the aggregated group that is not ~~treated as a flow-through entity under 830 CMR 63.38M.1(7)(c), above, whether or not incorporated a partnership.~~

(g) Aggregated Massachusetts Qualified Research Base Amount. The aggregated Massachusetts qualified research base amount is determined under 830 CMR 63.38M.1(5)(a), above, 2(6) in the same manner as for a ~~single corporation that is not a member of an aggregated group~~, except as provided below:

1. Qualified research expenses. For all purposes relevant to the calculation, aggregated Massachusetts qualified research expenses, as determined for the entire group under 830 CMR 63.38M.1(7)(f), above, 2(9)(d) shall be substituted for Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.1(4), above, 2(5).
2. Gross receipts. Where the calculation involves gross receipts for a single taxable

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year, or for a period of taxable years, gross receipts for the relevant period shall be the sum of the gross receipts of all members of the aggregated group for that period, except gross receipts received by entities treated as ~~flow-through entities~~partnerships and attributed to other members of the group under 830 CMR 63.38M.4(7)(c), ~~above~~2(9)(b).

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3. ~~Start-up groups.~~ The start-up provisions of 830 CMR 63.38M.1(5)(c)2., above, shall not apply to individual group members. However, where every member of an aggregated group, as comprised during the first taxable year for which the credit is claimed, is a start-up company under 830 CMR 63.38M.1(5)(c)2., above, during the first taxable year for which the credit is claimed, the Massachusetts fixed base percentage of the aggregated group is three percent.

4. ~~Inadequate records.~~ If any member of an aggregated group is unable to compute its ~~base period~~ aggregate Massachusetts qualified research expenses or ~~base period~~ aggregate gross receipts for the applicable period due to inadequate accounts and records ~~for the base period~~, the Massachusetts fixed-base ~~percentage~~ratio of the aggregated group is ~~sixteen percent~~16%.

5. ~~Minimum Aggregated Massachusetts Qualified Research Base Amount.~~ Notwithstanding any other provision of this subsection, 830 CMR 63.38M.1(7)(g), in no event shall the aggregated Massachusetts qualified research base amount for the taxable year for which the credit is being determined be less than 50 percent of aggregated Massachusetts qualified research expenses as computed for the taxable year under 830 CMR 63.38M.1(7)(f), above.

~~(f)~~

~~(h)~~

Aggregated Massachusetts Basic Research Payments. The aggregated Massachusetts basic research payment is determined under 830 CMR 63.38M.4(6)(a), ~~above~~2(7)(c) in the same manner as for a ~~single corporation~~ that is not a member of an aggregated group, except as provided below:

1. Basic research payments. Massachusetts basic research payments shall be the sum of the Massachusetts basic research payments, determined under 830 CMR 63.38M.4(6)(c), ~~above~~, of each of the members of the aggregated group that is not treated as a flow-through entity under 830 CMR 63.38M.1(7)(c), above, whether or not incorporated. For purposes of computing Massachusetts basic research payments under this provision, members of the aggregated group that are not corporations and are not treated as flow-through entities under 830 CMR 63.38M.1(7)(c), above, must compute their Massachusetts basic research payments under 830 CMR 63.38M.4(6)(c), above, as though they were corporations. 2(7)(c) of each of the members of the aggregated group that is not treated as a partnership.
2. Base period amount. The Massachusetts base period amount is the sum of the minimum Massachusetts basic research amounts, determined under 830 CMR 63.38M.4(6)(e), ~~above~~2(7)(d) and the Massachusetts maintenance-of-effort amounts, determined under 830 CMR 63.38M.4(6)(7)(f), ~~above~~, of each of the members of the aggregated group that is not treated as a ~~flow-through entity~~ under 830 CMR 63.38M.1(7)(c), above, whether or not such entities are incorporated. For purposes of determining the sum of the members' Massachusetts maintenance-of-effort amounts under this provision, 830 CMR

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63.38M.4(7)(h)2., only 2(9)(f), the maintenance-of-effort amount for any member may be negative, but may not be used to reduce the minimum basic research amounts of the group or any member. ~~For purposes of computing the Massachusetts base period amount under this provision, members of the aggregated group that are not corporations and are not treated as flow-through entities under 830 CMR 63.38M.1(7)(c), above, must compute their Massachusetts base period amounts under 830 CMR 63.38M.1(6)(d), above, as though they were corporations.~~

3. Floor amount. The floor amount provisions of 830 CMR 63.38M.4(6)2(7)(e)2., ~~above,~~ shall not apply to individual group members. However, where no member of the aggregated group, as comprised during the first taxable year for which the credit is claimed, both (i) existed for at least one taxable year (other than a short taxable year) during the base period, and (ii) made Massachusetts basic research payments, as determined under 830 CMR 63.38M.4(6)2(7)(c), ~~above,~~ during that base period taxable year, the minimum Massachusetts basic research amount for the aggregated group shall not be less than 50-~~percent~~% of the Massachusetts basic research payments, as determined under 830 CMR 63.38M.42(7)(h)1., for the ~~taxable year for which the credit is being determined~~year.
 4. Inadequate records. If any member of an aggregated group is unable to compute its minimum basic research amount due to inadequate accounts and records for the base period, the Massachusetts minimum basic research amount of the aggregated group is 50-~~percent~~% of the group's aggregated Massachusetts basic research payments, determined under 830 CMR 63.38M.4(7)(h)1., 2(9)(f), for the taxable year for which the credit is being determined.
- (ig) Allocation of the Aggregated Group's Credit. The aggregated group's credit, as determined under 830 CMR 63.38M.4(7)(e), ~~above, 2(9)(c),~~ shall be allocated in the following manner to each member of the aggregated group that is a corporation doing business in Massachusetts to determine such member's credit for the taxable year. Each such member's allocated share of the credit is the aggregated credit, as determined under 830 CMR 63.38M.4(7)(e), ~~above, 2(9)(c),~~ multiplied by a fraction, the numerator of which is the sum of the member's Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.4(4), ~~above, 2(5),~~ and the member's Massachusetts basic research payments, as determined under 830 CMR 63.38M.4(6), ~~above, 2(7),~~ and the denominator of which is the sum of all such members' Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.4(4), ~~above, 2(5),~~ and Massachusetts basic research payments as determined under 830 CMR 63.38M.4(6), ~~above, 2(7),~~ The amount of any credit generated by the activity of an unincorporated entity or a corporation not doing business in Massachusetts and attributed to a corporation doing business in Massachusetts under this provision, 830 CMR 63.38M.4(7)(2)(9)(g), shall be deemed to be generated by the corporation doing business in Massachusetts for purposes of carrying the credit over to subsequent taxable years under 830 CMR 63.38M.4(10)-~~2(12), below.~~
- (jh) Example. This example illustrates the aggregation of the Massachusetts qualified research credit for the XYZ Group. The XYZ Group is an aggregated group consisting of the following five entities: (1) Corporation X, which is doing business in

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Massachusetts; (2) Corporation Y, which is also doing business in Massachusetts; (3) Corporation Z, which is not doing business in Massachusetts; (4) Partnership A, which is ~~fifty percent~~50% owned by ~~X~~-Corporation ~~X~~ and ~~twenty five percent~~25% owned by ~~Y~~-Corporation ~~Y~~; and (5) Massachusetts Business Trust B. No member of the Group made any basic research payments during the taxable year. The relevant Massachusetts qualified research expenses (MA QRE) and gross receipts ~~for the current taxable year and the base period~~ are provided in the following chart:

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ENTITY	MA QRE	BASE	BASE	AVERAGE AVG
QUALIFIED	ANNUAL			PERIOD
PERIOD	AVG	AVG ANNUAL		
		RESEARCH EXP	GROSS RECEIPTS	
		MA QRE	GROSS RECEIPTS	
		FOR 3 RD & 4 TH	FOR 3 RD & 4 TH	OVER 4 PRECEDING
				RECEIPTS TAXABLE YRS
TAXABLE YRS		RECEIPTS TAXABLE		
			YEARS	
		PRECEDING THE	PRECEDING THE	YRS
		CREDIT YR	CREDIT YR	
X	\$ 25	\$1000	\$15,000	\$40,000
Y	500	100	10,000	5,000
Z	0	100	10,000	20,000
A	4,000	0	0	1,000
B	50	0	-3,000	7,500

The aggregated qualified research credit ~~effor~~ for the XYZ ~~group~~Group is computed using the following steps:

Flow-Through. Because A is a partnership owned by members of the Group, its expenses and gross receipts are attributed to X and Y according to their ~~ownership~~ interest in A. Thus, \$2,000 of A's Massachusetts qualified research expense flows through to X, and \$1,000 of ~~that A's~~ expense flows through to Y. Similarly, \$500 of A's average annual gross receipts for the previous four years flow through to X, and \$250 of ~~these A's~~ receipts flow through to Y.

Aggregated Massachusetts Qualified Research Expenses. The Group's aggregated Massachusetts qualified research expenses are \$3,575, determined by adding the \$575 of Massachusetts qualified research expense incurred directly by X, Y, Z, and B, the \$2,000 share of A's Massachusetts qualified research expenses attributed to X, and the \$1,000 share of A's Massachusetts qualified research expenses attributed to Y.

Base Period Massachusetts Qualified Research Expenses. ~~Base period for the 3rd and 4th taxable year preceding the credit year.~~ Massachusetts qualified research expenses are \$1,200, determined by adding the separately determined Massachusetts qualified research expenses incurred directly by X, Y, Z, and B. Note that if A had Massachusetts ~~base period~~ qualified research expenses, those expenses would be attributed to X and Y in the same manner as Massachusetts qualified research expenses and average annual gross receipts.

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Base Period Gross Receipts. ~~Base period gross for 3rd and 4th taxable years preceding the credit year.~~ Gross receipts are \$38,000, determined by adding the separately determined gross receipts of all members. Again, if A had ~~base period~~ gross receipts they would be attributed to X and Y in the same manner as Massachusetts qualified research expenses and average annual gross receipts.

Average Annual Gross Receipts. Average annual gross receipts for the four previous taxable years are \$73,250, determined by adding the \$72,500 of average annual gross receipts received directly by X, Y, Z, and B, the \$500 share of A's average annual gross receipts attributed to X, and the \$250 share of A's average annual gross receipts attributed to Y.

Massachusetts Fixed-Base Percentage Ratio. The Group's Massachusetts fixed-base ~~percentageratio~~ is 3.16 ~~percent.%~~, determined by dividing ~~base period aggregated~~ Massachusetts qualified research expenses of \$1,200 by ~~base period~~ aggregate gross receipts of \$38,000.

Aggregated Group's Massachusetts Qualified Research Base Amount. The ~~Group's~~ aggregated ~~group's~~ Massachusetts qualified research base amount is \$2,314.70, determined by multiplying the \$73,250 of average annual gross receipts for the four previous years by the fixed-base ~~percentageratio~~ of 3.16 ~~percent.%~~.

Aggregated Group's Massachusetts Qualified Research Credit. The ~~Group's~~ aggregated ~~group's~~ Massachusetts qualified research credit is \$126.03, determined by reducing Massachusetts aggregated qualified research expenses of \$3,575, by the \$2,314.70 aggregated qualified research base amount, and multiplying the resulting amount by 10 ~~percent.%~~.

Allocation of the Credit. The \$126.03 ~~aggregated~~ qualified research credit must be allocated to X and Y, the members of the group that are subject to the corporate excise. The allocation is based on each corporation's qualified research expenses and basic research payments for the taxable year. Since neither corporation made any basic research payments, X has a qualified research credit of \$72.40, determined by multiplying the aggregated qualified research credit of \$126.03, by a fraction the numerator of which is X's qualified research expenses of \$2,025 (including amounts that flow through from A) and the denominator of which is the total of X and Y's qualified research expenses of \$3,525 (including amounts that flow through from A), and basic research payments of \$0. Y's qualified research credit is \$53.63, determined by multiplying the aggregated qualified research credit of \$126.03, by a fraction the numerator of which is Y's qualified research expenses of \$1,500 (including amounts that flow through from A) and the denominator of which is the total of X and Y's qualified research expenses of \$3,525 (including amounts that flow through from A), and basic research payments of \$0.

- ~~(8)~~ (i) Calculating the aggregated group's credit using the alternative simplified method. In lieu of calculating the credit under the provisions of 830 CMR 63.38M.2(9)(c), an aggregated group may calculate the credit using the alternative simplified method set forth in 830 CMR 63.38M.2(8). In such case, all members of the aggregated group must calculate the credit using the alternative simplified method. The aggregated group shall calculate its credit for the taxable year in the same manner and subject to the same limitations as a corporation that is not a member of an aggregated group.

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~~except that the aggregated group's Massachusetts qualified research expenses for the taxable year are the sum of each member's qualified research expenses for the taxable year, and the aggregated group's average qualified research expenses for the three years preceding the credit year is the sum of each member's average qualified research expenses for the three years preceding the credit year..~~

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(10) **Limitations on the Credit.** The amount of the credit, including any credit carried over from previous taxable years under 830 CMR 63.38M. ~~1(10), below; 2(12).~~ that a corporation may claim for a taxable year is limited in the following ways.

(a) **\$25,000 Limitation.** The amount of the credit is limited to 100-~~percent~~% of the corporation's first \$25,000 of corporate excise liability, plus 75-~~percent~~% of the corporation's corporate excise liability in excess of \$25,000.

1. **Calculation of corporate excise liability.** For purposes of applying the \$25,000 limitation, corporate excise liability is determined before the application of any other Massachusetts credits. Corporate excise liability includes amounts due under both the income measure and non-income ~~measures~~measure of the corporate excise.

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2. **Aggregated groups.** ~~A single \$25,000 limitation applies to all~~In the members case of an aggregated group, ~~as defined under 830 CMR 63.38M.1(7)(b), above, that are corporations doing business in Massachusetts. Whether such members file separate returns, or file as a combined group,~~ the amount of the credit is limited to 100% of the group's first \$25,000 of corporate excise liability~~below which 100 percent of the credit is available must be reduced for each such member to an amount, plus 75% of the group's corporate excise liability in excess of \$25,000. Each member's share of the \$25,000 limitation is~~ equal to \$25,000, multiplied by a fraction, the numerator of which is the member's separately determined corporate excise liability and the denominator of which is the sum of the separately determined corporate excise liabilities of all such members.

(b) **Minimum Corporate Excise Limitations.** The credit may not be applied to reduce the minimum corporate excise imposed under M.G.L. c. 63, ~~§§ 32(b), §~~ 39(b), or to reduce any amount of corporate excise imposed by M.G.L. c. 63, § 67.

(c) ~~Carry Over~~**Carryover of Disallowed Credit.** The amount of any credit that is not allowed for a taxable year due to the limitations described by 830 CMR 63.38M. ~~1(82)(10)(a), and (b), above,~~ may be carried over to subsequent taxable years as provided by 830 CMR 63.38M. ~~1(10), below; 2(12).~~

(d) **Section 32C Inapplicable.** In determining the amount of the credit allowable for a taxable year the provisions of M.G.L. c. 63, § 32C, shall not apply.

(911) **Interaction ~~With~~ Other Credits.**

(a) **Ordering.** Corporations that can claim both the research credit and ~~any other~~another Massachusetts credit allowed under M.G.L. c. 63, for a taxable year may ~~apply the research credit~~claim such credits in any order ~~they desire~~ with respect to such other allowable credits. Under most circumstances claiming the credit in the order listed on ~~Forms 355A and 355B~~the Massachusetts tax forms will benefit the corporation by giving priority to credits that lapse first. Corporations that depart from the order listed

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on ~~Forms 355A and 355B~~ the Massachusetts tax forms for any taxable year must attach to their return for the taxable year and all subsequent taxable years an addendum reconciling the total amount of each credit claimed using the order adopted by the corporation with the total amount of each credit that would have been claimed using the order listed on the form.

- (b) Application of Limitations. Where a corporation is eligible for both the research credit and a credit that is limited by M.G.L. c. 63, § 32C, the limitations on the research credit described at 830 CMR 63.38M.4(8), ~~above, 2(10)~~ and the limitations imposed by M.G.L. c. 63, § 32C, shall be applied independently, based on the amount of corporate excise liability determined before the application of any credits. In determining the amount of corporate excise liability for purposes of applying the limitations on any credit, such amount need not be adjusted to reflect the amount of any other credit claimed, provided, however, that no credit may be used to reduce the corporate excise below the minimum corporate excise described at 830 CMR 63.38M.4(82(10)(b)).

Example. Corporation A has a \$100,000 corporate excise liability determined before the application of any credit. Corporation A has \$60,000 of investment tax credit and \$90,000 of research credit available. The maximum amount of the investment tax credit allowable under M.G.L. c. 63, § 32C, is \$50,000 (50 ~~percent~~% of Corporation A's \$100,000 corporate excise liability). The maximum amount of the research credit allowable under 830 CMR 63.38M.4(82(10)(a), ~~above,~~) is \$81,250 (Corporation A's first \$25,000 of corporate excise liability plus 75 ~~percent~~% of the remaining \$75,000 of corporate excise liability). Corporation A may use up to the maximum amount of each credit in any order it desires to reduce its corporate excise liability to the minimum corporate excise. Thus, A Corporation may use the credit in any of the following three ways:

1. Corporation A may apply the full \$50,000 of allowable investment tax credit to reduce its corporate excise liability to \$50,000, and then apply \$49,544 of the research credit to further reduce its corporate excise liability to the \$456 minimum.
2. Alternatively, Corporation A may apply the full \$81,250 of the allowable research credit to reduce its corporate excise liability to \$18,750, and then apply \$18,294 of the investment tax credit to reduce its corporate excise liability to the \$456 minimum.
3. In addition, Corporation A may use any other combination of the allowable research credit and the allowable investment tax credit to reduce its corporate excise to the \$456 minimum.

~~(10) Carry-Over~~(12) Carryover of Unused Credit.

- (a) General. A corporation that does not use the full amount of the credit generated in a taxable year may carry over the unused amount of the credit ~~over to its~~ succeeding taxable years as follows:

1. Unlimited carry-over/carryover. Amounts of the credit that are not used in a taxable year because of the \$25,000 limitation described ~~by~~in 830 CMR 63.38M.4(82(10)(a), ~~above,~~) may be carried over to any succeeding taxable year.

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2. Fifteen year ~~carry-over~~carryover. Amounts of the credit that are not used in a taxable year because the amount of the credit exceeds the corporation's corporate excise liability for the taxable year, or because of the minimum corporate excise limitation described ~~by~~in 830 CMR 63.38M.1~~(82(10)(b), above,)~~ may be carried over to any of the fifteen taxable years succeeding the taxable year in which the credit is generated.

(b) Accounting for Unused Credit. ~~Corporations~~A corporation must keep records distinguishing amounts of unused credit eligible for unlimited ~~carry-over~~carryover from amounts of the credit eligible for fifteen year ~~carry-over~~carryover. In addition, ~~corporations~~a corporation must keep records of the amount of credit eligible for ~~carry-over~~carryover generated in each previous taxable year and the amount of such credit that was carried over and used in succeeding taxable years.

(c) Carry-Over/Carryover to Earliest Eligible Year. The unused, unexpired, amount of the credit generated in a taxable year must be carried over to the earliest succeeding taxable year for which it may be applied under the ordering rules applicable to the corporation under 830 CMR 63.38M.1~~(92(11))~~. The unused, unexpired, amount of the credit generated in a taxable year must be used before any unused, unexpired, credit generated in a succeeding taxable year.

~~(d) Carry-Over Amount. The amount of the credit generated in previous taxable years that may be carried over and applied for a taxable year is the total amount of unused, unexpired, credit generated in previous taxable years, that may be applied in the taxable year under this regulation, 830 CMR 63.38M.1.~~

~~(e)~~ (d) Interaction With Current Credit. Where a corporation has available both an amount of credit generated in the current taxable year and an amount of credit carried over from previous taxable years, the corporation must apply any ~~carry-over~~carryover amounts before applying the amount of credit generated in the current taxable year.

~~(11)~~

(13) Mergers and Changes of Ownership.

(a) Mergers. In the event of a merger of two or more corporations, the ~~surviving~~ corporation surviving the merger (the "surviving corporation") shall determine the amount of the credit, and the availability of any credit carry over, under the provisions of this regulation, 830 CMR 63.38M.1~~2~~, subject to the following additional rules:

~~1.~~

1. Effect of merger on amount of Massachusetts qualified research expenses. The surviving corporation shall add the Massachusetts qualified research expenses for the applicable period of all the corporations absorbed in the merger to its own qualified research expenses for the applicable period.

Effect of merger on calculation of qualified research base amount. For purposes of calculating the Massachusetts qualified research base amount under 830 CMR 63.38M.1~~(52(6))~~, the surviving corporation shall add the separately calculated Massachusetts qualified research base amounts of all corporations absorbed in the merger to its own Massachusetts qualified research base amount.

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2. Effect of merger on calculation of Massachusetts basic research payments. For purposes of calculating Massachusetts basic research payments under 830 CMR 63.38M.4(62)(7), the surviving corporation's Massachusetts base period amount, as determined under 830 CMR 63.38M.4(62)(7)(d), shall include the separately calculated Massachusetts base period amounts of all corporations absorbed in the merger.

Effect of merger on calculation of the credit using alternative simplified method. For purposes of calculating the credit using the alternative simplified method provided in 830 CMR 63.38M.2(8), the surviving corporation's Massachusetts qualified research expenses for the applicable period shall be the combined Massachusetts qualified research expenses of the surviving corporation and all the corporations absorbed in the merger.

3. Effect of merger on credit carry over. In the event of a merger of two or more corporations, the surviving corporation retains any amount of credit carry over, determined under 830 CMR 63.38M.4(10), ~~above, 2(12)~~, that it separately generated before the merger. All of the credit carry over generated by a corporation absorbed in the merger is lost. The surviving corporation may not apply or carry over any amount of credit generated by a corporation that it absorbs. In the event of a consolidation of two or more previously existing corporations into a new corporation, the new corporation starts with no credit carry over. All of the credit carried over by the previously existing corporations is lost. The new corporation may not apply or carry over any amount of credit generated by any of the previously existing corporations before the consolidation.
4. Certain corporate changes distinguished. Transactions affecting a single corporation that do not terminate the existence of the corporation for Massachusetts tax purposes shall not be considered mergers for purposes of this section, 830 CMR 63.38M.4(142)(13). Such transactions include mere changes in identity, form, or place of organization of one corporation under ~~SectionCode § 368(a)(1)(F) of the Code,~~ and the recapitalization of a single corporation under ~~SectionCode § 368(a)(1)(E) of the Code.~~
- (b) Other Acquisitions. Where, ~~after December 31, 1983,~~ a corporation acquires the major portion of the trade or business of another person (a "predecessor") or the major portion of a separate unit of trade or business of a predecessor within the meaning of ~~SectionCode § 41(f)(3)(A) of the Code,~~ and where 830 CMR 63.38M.4(142)(13)(a) does not apply, the corporation making the acquisition (the "acquiring corporation") shall determine its Massachusetts qualified research base amount under 830 CMR 63.38M.4(52)(6) by increasing its Massachusetts qualified research expense and gross receipts for the base period by so much of the amount of the Massachusetts qualified research expense and gross receipts of the predecessor as is attributable to the portion of such trade or business or unit of trade or business acquired by the corporation.

If a corporation making an acquisition described in this paragraph 830 CMR 63.38M.2(13)(b) uses the alternative simplified method as provided in 830 CMR 63.38M.2(8) to calculate the credit, then such corporation shall determine its credit by increasing its Massachusetts qualified research expenses for the applicable period by so much of the amount of the Massachusetts qualified research expenses of the

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predecessor as is attributable to the portion of such trade or business or unit of trade or business acquired by the corporation.

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- (c) Certain Dispositions. Where, ~~after December 31, 1983,~~ a corporation disposes of the major portion of its trade or business or the major portion of a separate unit of its trade or business within the meaning of ~~Section Code § 41(f)(3)(A) of the Code,~~ and where 830 CMR 63.38M.4(142(13)(b), ~~above,~~) applies to the transaction, the corporation making the disposition may determine its Massachusetts qualified research base amount under 830 CMR 63.38M.4(52(6)) by reducing its Massachusetts qualified research expense and gross receipts for the ~~base~~applicable period by so much of the amount of its Massachusetts qualified research expense and gross receipts as is attributable to the portion of the trade or business or unit of trade or business disposed of by the corporation, provided that the corporation provides the acquirer such information as is necessary to make the calculations required by 830 CMR 63.38M.4(142(13)(b), ~~above,~~).

(12) If the corporation making the disposition uses the alternative simplified method as provided in 830 CMR 63.38M.2(8) to calculate the credit, then that corporation shall determine its credit by reducing its Massachusetts qualified research expenses for the applicable period by so much of the amount of the Massachusetts qualified research expenses as is attributable to the portion of such trade or business or unit of trade or business disposed of by the corporation, provided that the corporation provides the acquirer such information as is necessary to make the calculations required by 830 CMR 63.38M.2(13)(b).

(14) Combined Groups.

- (a) General. The amount of the credit shall be determined separately, under the provisions of this regulation, 830 CMR 63.38M.4, ~~2~~ for each corporation that is a member of a combined group, as defined at 830 CMR 63.32B.138M.2(2).
- (b) Limitations on the Credit. The limitations on the amount of the credit that a corporation may claim for a taxable year, described at 830 CMR 63.38M.4(8), ~~above,~~ 2(10)(a), shall apply to each member of a combined group separately, ~~provided that members unless such member is also a member of an aggregated group must reduce the amount of corporate excise liability below, in which 100 percent of case the credit is available~~ limitations apply as required by described in 830 CMR 63.38M.4(82(10)(a))(2, ~~above,~~). In applying those limitations, the corporate excise liability of each member of the combined group is the member's separately computed excise determined under ~~830 CMR M.G.L. c. 63.32B.1(8)(a), § 39.~~

- ~~(c) Sharing the Credit. A member of a combined group must use the amount of the credit available to it for a taxable year first to offset its own separately determined corporate excise liability for the taxable year. Where a member of a combined group cannot use the full amount of the credit available for a taxable year because the amount of the credit exceeds its separately determined corporate excise liability or because of the limitations on the credit described by 830 CMR 63.38M.1(8), above, that member may share the amount of the credit, including any carry over amounts, that it cannot use with other members of the combined group to the extent that such other members can apply the credit to their separately determined corporate excise liabilities for the taxable year under the limitations described by 830 CMR 63.38M.1(8), above. To the extent that the other members of the group cannot use the credit for the taxable year,~~

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~~the amount of unused, unexpired credit may be carried over to subsequent taxable years only by the member that generated the credit, and only to the extent permitted under 830 CMR 63.38M.1(10), above, and 830 CMR 63.38M.1(12)(d), below. Members of combined groups may share the credit in the manner described above regardless of whether the group filed a combined return for the taxable year in which the credit was generated.~~

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~~(c) Sharing the Credit. For the rules governing sharing of the credit by members of a combined group of corporations, see 830 CMR 63.32B.2(9).~~

~~(d) Carry Over. Subject to the carry over provisions of 830 CMR 63.38M.4(10), above, each member of a combined group may carry over any unexpired amounts of the credit that have not been used to reduce the corporate excise liability of any member of the combined group. Each member of a combined group may carry over amounts of unused, unexpired, credit only to the extent that such amounts are generated by the member itself. The combined group, therefore, has no credit or carry-over of its own-carryover of its own. For additional rules governing the carryover of the credit by members of a combined group of corporations, see, 830 CMR 63.32B.2(9)(c).~~

~~(13)~~

~~(15) Election to Calculate Massachusetts Qualified Research Expense Credit Separately for Defense-Related Activities and Other Qualified Activities.~~

~~(a) General. For tax years beginning on or after January 1, 1995, the taxpayerA corporation may elect to compute the credit for Massachusetts qualified research expenses separately for defense-related activities and other research activities. The election isshall be made by checkingin the appropriate box on Massachusetts Schedules RC or RC-A.manner prescribed by the Commissioner. When making this election, the taxpayercorporation must calculate qualified Massachusetts research expenses and the Massachusetts qualified research base amount separately for defense-related activities and other qualified activities. Each calculation must be completed as provided in 830 CMR 63.38M.4(42(5) and 830 CMR 63.38M.4(52(6). The taxpayercorporation must have adequate records as described in 830 CMR 63.38M.4(142(16)(d) in order to make this election. The election will not cause any expense not otherwise qualified for the Federal Creditfederal credit to qualify for the Massachusetts Research Creditresearch credit. This election also does not change the calculation of the portion of the credit pertaining to basic research payments as provided in 830 CMR 63.38M.4(32(4) and 830 CMR 63.38M.4(62(7).~~

~~(b) Effect of Election. A taxpayercorporation electing to calculate the credit in accordance with 830 CMR 63.38M.4(132(15) for a taxable periodyear is not required to use that method for subsequent taxable years.~~

~~(c) Requirement that Defense-Related Research be Pursuant to a Government Contract. Generally, for research to be considered defense-related, otherwise-qualified researchit must be both directly related to the fulfillment of a government contract or subcontract and be conducted while the contract is in effect. -Otherwise qualified research expenses incurred prior to the execution of a government contract will generally not be considered defense-related for purposes of calculating the credit. However, "independent research and development costs" and "bid and proposal costs" within the meaning of IRS-Reg-§1.41-(5)(d)(4) will be considered research pursuant to a government contract if they are otherwise-qualified research expenses.~~

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- (d) Aggregated groups. All members of an aggregated group, as defined by 830 CMR 63.38M.4(7)(b), ~~above, 2(2)~~ must compute the Massachusetts qualified research expense credit for defense-related activities and other qualified activities in the same manner. If the group elects to calculate the Massachusetts qualified research expense credit for defense-related activities and other qualified activities separately, the election is binding on all members for that taxable ~~period~~ year.
- (e) Limitations on the Credit. The total qualified research expense credit attributable to defense-related activities and other qualified activities is subject to the limitations in 830 CMR 63.38M.4(82(10)).
- (f) Calculation of Fixed-Base ~~Percentage~~Ratio.

1. General Rule. The fixed-base ~~percentage~~ratio must be calculated separately for defense-~~and non-defense~~-related activities and other qualified activities in accordance with 830 CMR 63.38M.4(52(6))(c).
2. Inadequate Records. ~~Taxpayers~~Corporations having inadequate records to compute the ~~separate~~ fixed-base ~~percentage~~ratio separately for defense-related activities and other qualified activities must use a fixed-base ~~percentage~~ratio of ~~sixteen percent, 16%~~, as provided in 830 CMR 63.38M.4(52(6))(c)3-2 in both calculations.

Example. Corporation B incurs \$10,000 in Massachusetts qualified research expenses for defense-related activities and \$100,000 in Massachusetts qualified research expenses for ~~non-defense related~~other qualified activities during a taxable year. It elects to calculate the credit in accordance with 830 CMR 63.38M.4(3,2(15)) and has inadequate records to calculate the fixed-base ~~percentage~~ratio. The average annual gross receipts of the corporation for the four preceding taxable years were \$200,000 for defense-related activities and \$500,000 for ~~non-defense related~~other qualified activities. The tentative credit (before application of limitations in 830 CMR 63.38M.4(82(10)) and carry over requirements in 830 CMR 63.38M.4(102(12)) attributable to defense-related research expenses is $10\% \times [10,000 - (.16)(200,000)] = 10\% \times (-22,000) = -2,200$. Since this calculation results in a tentative credit of less than zero, Corporation B has no tentative credit attributable to defense-related research expenses. However, the tentative credit attributable to ~~non-defense related~~other qualified activities is $10\% \times [100,000 - (.16)(500,000)] = 10\% \times [20,000] = 2,000$. Thus, subject to the limitations in 830 CMR 63.38M.4(82(10)) and 830 CMR 63.38M.4(102(12)), the ~~taxpayer~~corporation is eligible for a credit due to its increase in non-defense qualified research expenses. Under the facts in this example, had corporation B failed to elect or qualify to make the election under 830 CMR 63.38M.4(315), it would not have been entitled to a credit for Massachusetts qualified research expenses for this taxable year since the calculation results in a number less than zero: $10\% \times [110,000 - (.16)(700,000)] = 10\% \times -2,000 = -200$.

- (g) Election to Use Massachusetts Gross Receipts. ~~The taxpayer~~A corporation electing to compute the credit for Massachusetts qualified research expenses separately for defense-related activities and other research activities may elect to use Massachusetts gross receipts as provided in 830 CMR 63.38M.4(52(6))(d).

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(h) Once the taxpayer files Calculating the Credit Using the Alternative Simplified Method. If a return on which it either elects to use Massachusetts gross receipts or uses federal gross receipts to calculate the corporation computing the credit for Massachusetts research credit, the taxpayer will be bound in subsequent taxable years qualified research expenses separately for defense-related activities and other research activities calculates the credit using the alternative simplified method as provided in 830 CMR 63.38M.4(5)(d)3., whether or not the taxpayer makes the election described in 830 CMR 63.38M.4(13)-2(8)(a), the corporation must use the alternative simplified method to calculate the credit for both the defense-related activities and other activities.

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(416) Recordkeeping and Accounting Methods.

- (a) Fixed-Base ~~Percentage Ratio~~ and Average Annual Gross Receipts. A ~~taxpayer corporation~~ must maintain records to substantiate the calculation of the fixed-base ~~percentage ratio~~ in accordance with 830 CMR 63.38M.4(52(6)(c) and the average annual gross receipts in accordance with 830 CMR 63.38M.4(52(6)(d). ~~Taxpayers Corporations~~ filing as an aggregated group in accordance with 830 CMR 63.38M.4(72(9) must retain all such information for each member of the group.
- (b) Allocation of Wages. A ~~taxpayer corporation~~ with employee(s) performing both qualified research and other activities must maintain adequate records to substantiate the allocation of wages for qualified research expenses including the methods used to allocate such wages to qualified research.
- (c) Employees Performing Qualified Research Activities. The following records must be maintained for each employee for whom the ~~taxpayer corporation~~ claims part or all of his or her wages as qualified research expenses.
 - 1. Name, taxpayer identification number, detailed job description, gross Massachusetts wages paid and Massachusetts wages included in the credit.
 - 2. Time cards, internal written documents or other substantially contemporaneous records which verify percentage of time devoted to qualified research activities.
 - 3. Organizational chart showing reporting structure for all departments, business units and individuals performing qualified research.
 - 4. Detailed description of each department or business unit performing qualified research and the nature of the research performed.
 - 5. Nothing in 830 CMR 63.38M.4(442(16)(c) shall be deemed to prohibit the use of sampling techniques whenever such techniques are considered appropriate and are mutually agreed to by both the Department of Revenue and the ~~taxpayer corporation~~.
- (d) Election under 830 CMR 63.38M.4(132(15).
 - 1. General. ~~Taxpayers Corporations~~ electing to calculate the credit in accordance with 830 CMR 63.38M.4(132(15) must maintain complete records of supporting data, including the records of accounting methods used in segregating data for the separate calculations. A ~~taxpayer corporation~~ must use the same accounting

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methods for the period in which a credit is claimed and in calculating the Massachusetts qualified research base amount for both the defense-related activities and non-defense-related portions of the calculation other qualified activities.

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2. Required Records. In order to make the election described in 830 CMR 63.38M.1(13)(15), a taxpayer corporation must, at a minimum, have adequate records to segregate gross receipts attributable to defense-related activities from other gross receipts for the period for which the election is made and the four preceding taxable years.

REGULATORY AUTHORITY

830 CMR 63.38M.1: M.G.L. c. 14, § 6(l); M.G.L. c. 62C, § 3

REGULATORY HISTORY

Date of Promulgation: April 10, 1992

Amended: October 2, 1998 — Subsection (1)(c), (2), (5)(d), (10)(e), (12)(e), (13), (14)

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