



Adjusting (R&D) Tax Credits and NOL Carryforwards in a Year Closed by the Statute of Limitations

When it comes to claiming missed (R&D) tax credits, many taxpayers are unaware of rules allowing them to adjust the carryover from years closed by the three-year statute of limitations without filing amended returns.

When a taxpayer does not owe any tax on a return, often they fail to take deductions and credits that they are entitled to. Later, when deductions and credits are needed, the taxpayer's reaction is to try and recoup as much of missed opportunity as possible. Section 6511 of the Internal Revenue Code ("IRC") mandates that claims for refunds or credits must be filed no later than three years from the time the return was filed or two years from the time the tax was paid. However, this is not what it seems. Revenue Rulings 77-225 and 1981-88 require carryforward losses and credits to be correct. Therefore, if an incorrect claim was made in a closed year, the carryforward amount may still be examined and subsequently adjusted (to prevent an impact on the tax due in a future year).

In Revenue Ruling 77-225, a taxpayer made a charitable contribution of a rare book collection in 1973. Because of losses, the taxpayer could not deduct the charitable contribution in 1973 but they were able to use the carryforward deduction in 1974, 1975, and 1976. When the taxpayer's 1974, 1975 and 1976 returns were examined, the IRS determined that the charitable deduction taken in 1973 was overstated. The IRS modified the charitable contribution carryforwards to reflect the change.

These same rules can be used to a taxpayer's advantage. Revenue Ruling 82-49 applied this same rationale to (R&D) tax credits. If a taxpayer was entitled to an (R&D) tax credit that would have resulted in a carryforward, the taxpayer is allowed to identify these credits in the current year and create or modify a carry forward.

KBKG Insight: A software developer is entitled to a Section 41 Credit for Increasing Research Activity ("R&D Credit"). The Company was a start up that had losses in each of its first 5 years (2009 to 2014). In 2015, the company became very profitable. Applying the rules and guidance from above, the Company is allowed calculate the R&D Credits for 2009 thru 2014 and create a carryforward that can be used in 2015.

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