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U.S. Supreme Court Denies Certiorari of Appellate Decision on Language of Federal Research Tax Credit

On March 13, 2013, the U.S. Supreme Court denied certiorari to hear an appeal from a decision of the U.S. Court of Appeals for the Second Circuit upholding a Tax Court ruling on specific language of the federal tax credit for increasing research activities [IRC Section 41]. In its ruling in *Union Carbide Corporation and Subsidiaries v. Commissioner of Internal Revenue* [2^d Cir., 697 F.3d 104 (2012)] the Second Circuit Court of Appeals addressed language of IRC providing a tax credit for “supplies used in the conduct of qualified research.” Union Carbide Corporation conducted research on products that were in the process of being manufactured and were in fact sold. Union Carbide requested the credit not just for the incremental cost of supplies involved in the conduct of the research but also for the costs of all the supplies used in the production process even though those supplies would have been used if the research had not been conducted. [In effect the argument was that the conduct of the research transformed the regular production process in total into a research process and supplies used in that total process were thus eligible for the credit.] The Court of Appeals upheld the Tax Court ruling that the credit was allowable only for the additional supplies that were used to perform the research.

In its discussion the Second Circuit Court of Appeals noted that Union Carbide’s argument placed exclusive emphasis on the word “used” and not enough on the words “in the conduct of qualified research.” It continued that the Tax Court had correctly stated that the credit was available for supplies used to conduct research that improves the production process of a specific product but that the costs for which Union Carbide sought the credit were indirect costs unallowable under the Section 41 because they involved production costs that would have been sustained in the production of the product regardless of any research activity. The Court noted “Affording a credit for the costs of supplies that the taxpayer would have incurred regardless of any qualified research it was conducting simply creates an unintended windfall...the [IRS] Commissioner is hardly compelled to adopt a construction [of the regulatory language] that would not necessarily be consistent with the purpose of the credit for increasing research activities.” [Emphasis added.]

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USCIS Issues New Version of Form I-9

On March 8, 2013, U.S. Citizen and Immigration Services (USCIS) published an announcement in the Federal Register advising employers that Employer Eligibility Verification Form I-9 has been revised. As most employers are aware, Form I-9 must be used to verify the identity and employment authorization for all new employees. The new Form I-9 shows the date 03/08/13 and can be downloaded from the USCIS web site at <http://www.uscis.gov/files/form/i-9.pdf>.

Employers are instructed to begin using the revised Form I-9 immediately or as soon as practical for all new employees. Employers who utilize a version of the Form I-9 older than 03/08/13 after May 7, 2013 may be subject to fines and penalties. This 60-day grace period has been provided by USCIS in recognition of the fact that “some employers may need additional time in order to make necessary updates to their business processes”. Employers should use the revised Form I-9 for new hires. Employers do not need to re-do already completed and on file Form I-9s for existing employees .

USCIS highlighted three key changes to the Form I-9 that it said are designed to minimize errors in completing the form. They are:

1. Addition of new data fields, for including the individuals passport (if applicable), telephone number and email address.
2. Revisions to the layout of the form. The length of the Form I-9 itself has increased from one page to two pages to accommodate the new fields, a larger font size, and a layout that is intended to be easier to read.
3. Improvement in the form’s instructions. The USCIS indicates it is in the process of updating The Handbook for Employers, M-274 and that it will be released shortly.

New ICANN Trademark Clearinghouse Launched March 26, 2013

There are presently 20 Top Level Domain Names (“TLDs”) in operation (like .com, .net, .edu and .org). The [Internet Corporation of Assigned Names and Numbers \(ICANN\)](#), a non-profit international organization that oversees the international domain name system. As early as this summer or fall, ICANN is expected to authorize the introduction of many new TLDs (like .software, .inc, .app and .cloud). On March 26, the registries that will operate these TLDs began to accept registrations for second-level domain names. A second-level domain name is the text to the right of the “www” and to the left of the TLD and can be anything—generic names of industries, products, or activities, geographic names, corporate or brand names.

The expansion of new domain names will likely lead to trademark infringement and cybersquatting—registering a trademark as a domain name with the bad faith intent of selling it to its rightful owner. To prevent this, trademark holders will want to take steps to register their brands on these new TLDs and to fend off cybersquatters and infringers who may try to register their trademark brands.

The [Trademark Clearinghouse](#) which launched March 26 is a database that is intended to make it easy for trademark owners to prevent track potentially infringing second-level domain name registrations. The Clearinghouse will accept nationally or regionally registered trademarks, but not state-registered marks.

The Clearinghouse will help brand owners prevent cybersquatting and trademark infringement by offering two services to trademark holders. Only those trademarks that are recorded in the Clearinghouse will be eligible for the protection offered by two services.

The first service is a “Sunrise Service” which allows trademark owners to register domain names corresponding to their trademarks at least 30 days before a new TLD is launched. Once the TLD is launched anyone can attempt to register any domain name with that new TLD.

The second service is a “Trademark Claims Service”. This service runs for at least 60 days after the TLD is launched. During this period, if someone attempts to register for a domain name that matches a trademark that has been recorded in the Clearinghouse, that person will be notified and provided with information about the trademark. If that person goes ahead and registers the domain name anyways, the Clearinghouse will send a notice to ant trademark owner whose mark is registered in the Clearinghouse to let them know that someone has registered a domain name that matches the recorded trademark.

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There are two types of fee structures: (1) a basic fee structure, that requires payment by credit card and ranges from \$150 for a one-year registration to \$725 for a five-year registration; or (2) an advanced fee structure, with fees as low as \$95 per registration, intended for large volume registrants and requires setting up a pre-payment account.

Trademark owners are encouraged to record their trademark brands in the Trademark Clearinghouse as soon as possible. After a mark has been recorded in the Clearinghouse, the next step is to wait until ICANN authorizes the launch of the first new TLDs.

Small Business Notes will include future alerts on this topic.

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