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§ 1.28–1 Credit for clinical testing expenses for certain drugs for rare diseases or conditions.

(a) General rule. Section 28 provides a credit against the tax imposed by chapter 1 of the Internal Revenue Code. The amount of the credit is equal to 50 percent of the qualified clinical testing expenses (as defined in paragraph (b) of this section) for the taxable year. The credit applies to qualified clinical testing expenses paid or incurred by the taxpayer after December 31, 1982, and before January 1, 1991. The credit may not exceed the taxpayer’s tax liability for the taxable year (as determined under paragraph (d)(2) of this section).

(b) Qualified clinical testing expenses—

(1) In general. Except as otherwise provided in paragraph (b)(3) of this section, the term “qualified clinical testing expenses” means the amounts which are paid or incurred during the taxable year which would constitute “qualified research expenses” within the meaning of section 41(b) (relating to the credit for increasing research activities) as modified by section 28(b)(1)(B) and paragraph (b)(2) of this section. For example, amounts paid or incurred for the acquisition of depreciable property used in the conduct of clinical testing (as defined in paragraph (c) of this section) are not qualified clinical testing expenses.

(2) Modification of section 41(b). For purposes of paragraph (b)(1) of this section, section 41(b) is modified by substituting “clinical testing” for “qualified research” each place it appears in paragraph (2) of section 41(b) (relating to in-house research expenses) and paragraph (3) of section 41(b) (relating to contract research expenses). In addition, “100 percent” is substituted for “65 percent” in paragraph (3)(A) of section 41(b).

(3) Exclusion for amounts funded by another person—(i) In general. The term “qualified clinical testing expenses” shall not include any amount which would otherwise constitute qualified clinical testing expenses, to the extent such amount is funded by a grant, contract, or otherwise by another person (or any governmental entity). The determination of the extent to which an amount is funded shall be made in light of all the facts and circumstances. For a special rule regarding funding between commonly controlled businesses, see paragraph (d)(5)(iv) of §1.28–1.

(ii) Clinical testing in which taxpayer retains no rights. If a taxpayer conducting clinical testing with respect to