The OBBBA—Research and Experimental Expenses (and the R&D Credit)

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Overview

The Tax Cuts and Jobs Act of 2017 amended IRC §174 to require taxpayers, for taxable years beginning after December 31, 2021, to capitalize and amortize research or experimental expenditures rather than deduct them currently. Domestic research or experimental expenditures were amortized over five years, and foreign research or experimental expenditures were amortized over 15 years. In each case, amortization began at the midpoint of the taxable year in which the expenditures were paid or incurred. Amounts paid or incurred for software development were treated as research or experimental expenditures under these rules. For many research-intensive businesses, including some farm and ranch operations engaged in agricultural innovation, this treatment increased taxable income because only a portion of those costs was deductible in the year incurred, even if the related activities had not yet generated revenue.

Congress later reversed that result for domestic expenditures. Effective for taxable years beginning after December 31, 2024, the OBBBA enacted new IRC §174A, which generally allows an immediate deduction for domestic research or experimental expenditures, while IRC §174 now applies only to foreign research or experimental expenditures, which continue to be capitalized and amortized over 15 years.

The 2025 legislation also provides transition relief for domestic research or experimental expenditures capitalized in 2022 through 2024. Generally, taxpayers may elect either to deduct the remaining unamortized domestic amount in their first taxable year beginning after December 31, 2024, or to recover that remaining amount over two taxable years beginning with that year. Certain eligible small businesses may also elect retroactive application of section 174A to taxable years beginning after December 31, 2021, subject to the section 448(c) gross receipts test, tax-shelter limitations, filing requirements, and applicable refund limitation periods.

OBBBA Provision

Section 70302 of the One Big Beautiful Bill Act (OBBBA) fundamentally changes the tax treatment of research and experimental (R&E) expenditures and the research credit. Under the Tax Cuts and Jobs Act of 2017 (TCJA), taxpayers were required to capitalize and amortize all R&E expenditures over five years (for domestic research) or fifteen years (for foreign research) for tax years beginning after December 31, 2021. The OBBBA repeals this rule for domestic R&E expenditures and enacts new IRC §174A, which allows taxpayers to immediately deduct domestic R&E expenditures in the year they are paid or incurred, effective for tax years beginning after December 31, 2024. Taxpayers may alternatively elect to capitalize and amortize domestic R&E expenditures over a period of at least 60 months, beginning with the month in which the taxpayer first realizes benefits from the expenditures.

For foreign R&E expenditures, IRC §174 as amended by the OBBBA continues to require capitalization and amortization over 15 years, with no immediate deduction allowed.

The OBBBA also provides a transition rule for eligible small business taxpayers - generally, taxpayers other than certain tax shelters that meet the gross receipts test under IRC §448(c) for their first taxable year beginning after December 31, 2024 - to retroactively apply the new expensing rules for domestic R&E expenditures to taxable years beginning after December 31, 2021, and before January 1, 2025. The deadline for making this election on an amended return or AAR was July 6, 2026, or, for a taxable year beginning in 2022, the earlier expiration of the applicable refund-claim period under IRC §6511. As of November 18, 2026, that deadline has passed. The retroactive election may have allowed eligible taxpayers to claim immediate deductions for domestic R&E expenditures in 2022, 2023, and 2024, potentially resulting in tax refunds or reductions in tax liability.

In summary, the OBBBA restores immediate expensing for domestic R&E expenditures for most taxpayers starting in 2025, and for eligible small businesses, this benefit can be applied retroactively to 2022–2024, subject to specific election and filing requirements. Foreign R&E expenditures remain subject to 15-year amortization. The gross receipts test for small business eligibility is determined under IRC §448(c) and is $31 million for 2025 ($32 million for 2026) subject to inflation adjustments.

Example

Green Acres Farm is a family-owned operation specializing in corn and soybean production. For purposes of this simplified tax example, assume the farm operates as a C corporation. To improve crop yield and reduce fertilizer costs, the farm's owner, John, experimented with a new cover crop and no-till planting system from 2022 to 2024. This involved new planting techniques, custom-designed equipment modifications, and extensive testing of soil and nutrient levels. Assume that these activities qualify for the R&D tax credit and that John has kept extensive records to support the credit claim.

Financial Data:

- **Average Gross Receipts (2022–2024): $25 million (assumed for the §448(c) test)**
- **Taxable Income (before R&E expenses and credits):**
  - 2022: $2,000,000
  - 2023: $2,100,000
  - 2024: $2,200,000
- **Qualified Research Expenditures (QREs):**
  - 2022: $100,000 (wages for labor, supplies for testing, contractor fees)
  - 2023: $120,000
  - 2024: $130,000
- **Federal R&D Tax Credit Calculation:** Based on the QREs, the farm determines it is eligible for the following credits:
  - 2022: $10,000
  - 2023: $12,000

- 2024: $13,000

Before the OBBBA, the TCJA required that the QREs be amortized over a five-year period.

2022 Original Tax Return (TCJA Capitalization Rules):

- **Initial Taxable Income:** $2,000,000
- **Capitalization and IRC §280C(c)(1) Adjustment:** Under former IRC §174(a), Green Acres Farm was required to charge the $100,000 of domestic qualified research expenditures (QREs) to a capital account. Under former IRC §280C(c)(1), claiming a $10,000 IRC §41 research credit required reducing the capitalized research account only by the excess of the credit over the allowable first-year amortization deduction ($10,000 credit - $10,000 deduction = $0 reduction):
  - **Unadjusted Capitalized Basis:** $100,000
  - **IRC §280C(c)(1) Capital Basis Reduction:** $0
  - **Adjusted Capitalized Basis for Amortization:** $100,000
- **Allowable IRC** §174 **Amortization Deduction:** Under the five-year amortization schedule with a mid-year convention, 10% of the basis is deductible in 2022 ($100,000 × 10% = $10,000). The remaining unamortized balance of $90,000 was scheduled to be recovered in subsequent years (20% per year for years two through five, and 10% in year six).
- **Taxable Income:** $2,000,000 - $10,000 = $1,990,000
- **Pre-Credit Tax Liability:** At the 21% corporate tax rate, gross tax liability equals $417,900 ($1,990,000 × 21%).
- **Research Credit Application: T**he farm applied its $10,000 IRC §41 credit to reduce tax liability.
- **Final Tax Due:** $417,900 - $10,000 = $407,900

This process repeats for 2023 and 2024, with only a small portion of the R&E costs being deducted each year, thereby keeping taxable income artificially high.

The "New Way" (Filing Amended Returns under the OBBBA)

Now, with the OBBBA's transition rule, the farm can make an election to retroactively apply the new expensing rules. The farm decides to file amended returns for all three years (and gets the amended returns filed by July 6, 2026)

Amended 2022 Tax Return:

Track 1: Timely Retroactive Small Business Election (Filed Prior to July 6, 2026)

If Green Acres Farm timely elected retroactive expensing on amended returns under Section 3.03 of Rev. Proc. 2025-28, it must apply the election consistently to all open tax years from 2022 through 2024:

Initial Taxable Income: $2,000,000

IRC §174A Immediate Deduction: Full expensing of the $100,000 of QREs incurred in 2022.

Section 280C(c)(1) Adjustment: Because the expenditures were fully deducted rather than capitalized, the $10,000 IRC §41 credit directly reduced the allowable deduction under IRC § 280C(c)(1), yielding a net IRC §174A deduction of $90,000 ($100,000 - $10,000). (Alternatively, the farm could have made a timely late election under IRC §280C(c)(2) to take a reduced credit of $7,900 and maintain the full $100,000 deduction).

Amended Taxable Income: $2,000,000 - $90,000 = $1,910,000

Amended Tax Liability: $1,910,000 × 21% = $401,100

Post-Credit Tax Due: $401,100 - $10,000 = $391,100

2022 Tax Refund Generated: $407,900 (original tax paid) - $391,100 (post-credit tax due) = $16,800

> **Note:** A similar recomputation applied to 2023 and 2024. Having eliminated its unamortized balance through amended returns, the farm had zero carryover to recover in 2025.

The farm would see similar, or even greater, savings for 2023 and 2024 because the higher R&E costs for those years would also be fully deductible.

Summary of the Impact:

By making the election under the OBBBA's transition rule, Green Acres Farm can:

1. **Fully Deduct R&E Expenses:** Instead of a small amortization each year, the farm can take a full deduction in the year the expenses were incurred. This significantly lowers its taxable income for 2022, 2023, and 2024.

2. **Generate a Refund:** The reduction in tax liability will result in a substantial refund for each year, providing a crucial cash infusion back into the business.

Note: The deadline for making the retroactive election was July 6, 2026, subject to the applicable refund-claim limitation for a taxable year beginning in 2022. That deadline has passed.

Observation: Taxpayers that did not previously claim R&D credits and were not required to amortize qualifying research expenditures for 2022, 2023, or 2024 may wish to revisit those years to determine whether qualifying research activities and expenditures support a credit claim on an amended return, subject to the applicable filing deadlines.

If Green Acres Farm did not make the retroactive amended-return election before July 6, 2026, the 2022–2024 returns remain as filed. Green Acres Farm recovers the remaining unamortized

domestic R&E balance as an amortization deduction on its 2025 return (or ratably over 2025 and 2026) under OBBBA Section 70302(f)(2) and Rev. Proc. 2025-28**.**

Rev. Proc. 2025-28[1]

In September 2025, the IRS issued Rev. Proc. 2025-28, which provides procedural guidance for taxpayers addressing research and experimental (R&E) expenditures under the OBBBA. The revenue procedure establishes procedures for making various elections and changes in accounting methods relating to R&E expenditures. Since then, Rev. Proc. 2026-32 has further modified the automatic accounting-method-change procedures in Rev. Proc. 2025-23, as modified by Rev. Proc. 2025-28. Among other changes, Rev. Proc. 2026-32 addresses the coordination of §481(a) adjustments with the recovery of unamortized amounts and extends certain eligibility-rule waivers for automatic changes for taxable years beginning before January 1, 2028.

Automatic consent procedures. The Rev. Proc. details the automatic consent procedures for changing an accounting method to either immediately deduct domestic R&E expenditures paid or incurred in tax years beginning after December 31, 2024 (the new general rule), or electing to capitalize and amortize domestic R&E expenditures over a period of at least 60 months. The Rev. Proc. also provides a simplified procedure for qualified small business taxpayers to elect to retroactively deduct domestic R&E expenditures paid or incurred in tax years beginning after December 31, 2021, and before January 1, 2025 (the period covered by the TCJA's mandatory capitalization). This election can be made via a statement attached to a timely filed return, an amended return, or an Administrative Adjustment Request (AAR).

Taxpayer options. According to the Rev. Proc., for R&E costs that were previously capitalized and amortized under the TCJA rules (for the 2022–2024 tax years), the taxpayer may deduct the remaining unamortized balance in full in the first tax year beginning after December 31, 2024, or spread the deduction ratably over a two-year period (2025 and 2026). The Rev. Proc. clarifies that this recovery is treated as an amortization expense. The Rev. Proc. generally grants automatic consent for taxpayers making these changes in accounting methods, often allowing for a simplified statement in lieu of the standard, more complex Form 3115. The Rev. Proc. also grants an automatic extension of time for certain taxpayers (such as those who filed their 2024 return on time without an extension) to file a superseding 2024 tax return to take advantage of the new elections and accounting method changes. Likewise, the Rev. Proc. provides guidance on making or revoking late elections related to the interaction between the R&E deduction and the research credit under I.R.C. §280C.

Under the Rev. Proc., small business taxpayers (average annual gross receipts ≤ $31 million) may retroactively apply IRC §174A to R&E expenditures for 2022–2024 by filing amended returns or AARs. Alternatively, a small business taxpayer can make the election on a timely filed original return. Either of these approaches will allow immediate expensing of domestic R&E costs for those years.

For 2025, taxpayers have two options for handling remaining unamortized domestic R&E balances – either deduct the full amount in 2025 or amortize it ratably over 2025–2026. Either choice must

[1] 2025-38, IRB 393.

be accompanied by specific election statements, and these statements can replace the need for Form 3115 in some cases.

For taxpayers not qualifying as an eligible small business, or if the decision is made not to amend the returns, the taxpayer has the option to take an accelerated deduction for the remaining unamortized balance of the domestic R&E expenditures from 2022–2024. This method does not require amending the 2022, 2023, or 2024 returns. Instead, the taxpayer can choose to deduct the remaining unamortized balance in one of two ways, starting with the first tax year after December 31, 2024 (i.e., the 2025 tax return for a calendar-year taxpayer): 1) deduct the entire remaining balance in the 2025 tax year; or 2) deduct the remaining balance ratably over two years (50% in 2025 and 50% in 2026) with no amended returns needing to be filed. This approach is simpler and means that the taxpayer is accelerating deductions that would have otherwise been taken over the rest of the five-year amortization period.

The retroactive election generally had to be applied consistently to all applicable taxable years in which the taxpayer incurred domestic R&E expenditures during 2022 through 2024. A taxpayer could not selectively apply the retroactive treatment to only one affected year while disregarding other affected years. The election and the required amended returns or AARs were due by July 6, 2026, subject to the applicable refund-claim limitation for a taxable year beginning in 2022. That deadline has passed. The election may have produced refunds for affected years, but the impact on the research credit also had to be considered, particularly the interaction with IRC §280C.

> **Summary:** An eligible small business that elected retroactive expensing was required to file amended returns or AARs for all affected years (2022, 2023, and 2024, as applicable). The deadline for making that election has passed. For other taxpayers—and for eligible small businesses that did not make the retroactive election—the no-amended-return approach was available. Under that approach, the taxpayer could claim the remaining unamortized balance as a deduction on the 2025 return or ratably over 2025 and 2026.

Comprehensive Example

Example 1: Retroactive Application for 2022–2024

Background:

- A small family farm meets the gross receipts test (≤ $31 million).
- From 2022–2024, the farm incurred research costs (e.g., soil enhancement trials, genetics improvement).

Without Election:

- Under the original I.R.C. §174 rules, these costs would need to be capitalized and amortized over 5 years (domestic R&E).

With Rev. Proc. 2025-28 Election:

- For each relevant year (2022, 2023, 2024), the farm can file an amended return or include the election in an original timely filed return to:
    - Apply IRC §174A retroactively
    - Expense the R&E costs immediately
    - Include proper election statements and, if needed, make or revoke an IRC §280C(c)(2) election.

Outcome:

- The farm receives refunds or reduces its tax liability from those years by fully deducting the R&E costs instead of amortizing them.

Example 2: Handling Unamortized Balances in 2025

Background:

- Suppose that, at the end of 2024, the taxpayer has a remaining unamortized balance of $50,000 from R&E costs incurred in earlier years.

Election Options Under Rev. Proc. 2025-28:

- Option A: Deduct the entire $50,000 on the 2025 return.
- Option B: Amortize the $50,000 equally over 2025 and 2026 (i.e., $25,000 per year).

The farm will need to choose between Option A or B, then attach a detailed election statement to the return. If done properly, no Form 3115 may be required just for this election (though still prudent to confirm based on IRS rules and the taxpayer's method history). Option A will deliver the maximum immediate tax relief in 2025. Option B smooths deductions and income over two years - potentially beneficial if expecting higher income or tax rates in one year. This is summarized in the following Table:

Taxpayer Type	**Prior Periods (2022–2024)**	**Unamortized Balance (2025)**
Small farm/ranch	Can use Rev. Proc. 2025-28 to retroactively apply IRC §174A for immediate expensing via amended or original return plus statement.	May deduct full balance in 2025 or amortize ratably over 2025–2026, with election statement.

Practitioner Guide

Practitioners whose clients have R&E expenses from prior years should first determine whether the taxpayer meets the applicable small-business gross receipts test. Once eligibility is established, the required election statements should be prepared. Each election must be supported by the appropriate written statement, which should include:

- Taxpayer name and EIN
- Years affected

- Description of R&E types (e.g., soil trials, feed formulations)
- Amounts involved
- A declaration identifying the accounting method change or election being made

Another consideration involves coordinating the tax planning with I.R.C. §280C(c)(2). A decision will need to be made whether to reduce the research credit or deduct R&E costs - make or revoke this election if applicable. There are two main options for handling previously capitalized R&E expenditures from 2022 through 2024, depending on whether the taxpayer qualifies as an "eligible small business" (average annual gross receipts of $31 million or less over the three preceding tax years). An eligible small business can elect to retroactively expense domestic R&E costs for 2022–2024.

In any event, the new rule should be approached strategically. Full expensing in a loss year may be less beneficial. On the other hand, amortizing may help manage taxable income and tax liability across years. The elections can be technically sensitive, and especially for entity-structure considerations (e.g., partnerships, trusts).

Conclusion

The OBBBA fundamentally changes the tax treatment of R&E expenditures by restoring the ability to immediately deduct domestic R&E costs for taxable years beginning after 2024. This change reverses the mandatory capitalization imposed by the TCJA and may provide a significant cash-flow benefit, particularly for businesses engaged in research and development. Revenue Procedure 2025-28 provides important guidance on the transition from the former rules, including the recovery of unamortized domestic R&E balances from 2022 through 2024 over one or two years, retroactive relief for eligible small businesses, and simplified procedures for certain accounting method changes. The new law restores an incentive for domestic innovation, but taxpayers must carefully evaluate the choice between immediate expensing and amortization, coordinate the deduction with the research credit under IRC §41 and §280C, and consider the potential impact on the interest expense limitation under IRC §163(j).

APPENDIX

Model Election Statements Under Rev. Proc. 2025-28

The following sample statements illustrate the two mutually exclusive compliance pathways available under Section 70302(f) of the One Big Beautiful Bill Act (OBBBA) and Revenue Procedure 2025-28, along with the optional coordinating research credit adjustment under IRC §280C(c)(2):

- **Pathway 1 (Sample Statement #1):** An eligible small business taxpayer electing retroactive IRC §174A expensing across all open transition years (2022–2024) via amended returns filed on or before July 6, 2026.

- **Pathway 2 (Sample Statement #2):** A taxpayer that did not elect retroactive expensing on amended returns, instead filing a statement in lieu of Form 3115 to recover its cumulative

unamortized domestic IRC §174 balances on its 2025 return under automatic accounting method change procedures.

- **Optional Attachment (Sample Statement #3):** A timely late election under IRC §280C(c)(2) and Section 4.03 of Rev. Proc. 2025-28 to take a reduced research credit in lieu of reducing the IRC §174A expense deduction. When Statement #3 is attached to an amended return, the taxpayer must select Option B under Paragraph 5 of Sample Statement #1 to ensure consistent tax reporting.

Sample Election Statement #1

Election by Eligible Small Business to Retroactively Apply IRC §174A (Filed with Amended Return / AAR)

Note*:* This election applied to eligible small business taxpayers (average annual gross receipts not exceeding $31 million for the 2025 taxable year under IRC §448(c)). The statutory deadline to file amended returns or Administrative Adjustment Requests (AARs) under this election was July 6, 2026 (or earlier under the applicable IRC §6511 refund statute of limitations). Once made, the election had to be applied consistently to all transition years (2022, 2023, and 2024) in which domestic research or experimental (R&E) expenditures were incurred.

FILED PURSUANT TO SECTION 3.03 OF REV. PROC. 2025-28

- **Taxpayer Name:** Cedar Valley Ranch, LLC
- **Taxpayer Identification Number (TIN/EIN):** 12-3456789
- **Taxable Year Affected:** Calendar Year Ending December 31, 2023
- **Return Type:** Amended Form 1065 (or Administrative Adjustment Request)
- **Filing Date:** [Filed on or before July 6, 2026]

1. **Election to Expense Retroactively:** Pursuant to Section 70302(f)(1)(A) of the OBBBA and Section 3.03 of Rev. Proc. 2025-28, the taxpayer hereby elects to apply IRC §174A retroactively to immediately deduct domestic research or experimental expenditures paid or incurred during the 2023 taxable year.

2. **Consistency Requirement:** In accordance with Rev. Proc. 2025-28, Section 3.03, the taxpayer affirms that it has filed or is concurrently filing amended returns (or AARs) to apply this election consistently across all applicable taxable years (2022, 2023, and 2024) in which the taxpayer paid or incurred domestic R&E expenditures.

3. **Eligible Small Business Status:** The taxpayer declares that:
    - It satisfies the gross receipts test under IRC §448(c) and Treas. Reg. §1.448-2(c) for its first taxable year beginning after December 31, 2024 (average annual gross receipts for the three preceding taxable years did not exceed $31 million); and
    - It is not a tax shelter prohibited from using the cash method of accounting under IRC §448(a)(3) and §448(d)(3) for its first taxable year beginning after December 31, 2024.

4. **Description and Amount of Expenditures**: During the 2023 taxable year, the taxpayer paid or incurred $92,000 in qualifying domestic R&E expenditures related to the following agricultural research activities:

    - Experimental soil nutrient optimization using variable-rate application;
    - Development and trial of drought-resistant forage blends; and
    - Cross-breeding trials for genetic improvement in livestock feed conversion efficiency.

5. **Coordination with IRC §280C:** [Select Option A or Option B]

    - **Option A - Deduction Reduction (Default):** The taxpayer is not making an election under IRC §280C(c)(2) on this return. In accordance with IRC §280C(c)(1), the allowable deduction under IRC §174A is reduced dollar-for-dollar by the full amount of the research credit determined under IRC §41(a). For the 2023 taxable year, the allowable IRC §174A deduction is reduced from $92,000 to $84,640 ($92,000 expenditures − $7,360 research credit).

    - **Option B - Reduced Research Credit Election** (Concurrent Filing with Statement #3): Pursuant to Section 70302(f)(1)(D) of the OBBBA, IRC §280C(c)(2), and Section 4.03 of Rev. Proc. 2025-28, the taxpayer is concurrently making an election on this amended return to take a reduced research credit under IRC §41. Accordingly, pursuant to IRC §280C(c)(2)(A)(i), IRC §280C(c)(1) does not apply, and the allowable domestic research or experimental expenditure deduction under IRC §174A remains unreduced at $92,000. See the attached "Late Election to Take a Reduced Research Credit Under IRC §280C(c)(2)" (Sample Election Statement #3) and amended Form 6765.

Signature:_____

Name/Title: John Marshall, Managing Partner

Date: [Insert Date Filed]

Sample Election Statement #2

Statement in Lieu of Form 3115 to Deduct Unamortized R&E Costs on 2025 Return (Automatic Accounting Method Change)

> **Note:** This statement is for a taxpayer that did not make the retroactive election on amended returns for 2022–2024. Such taxpayers recover their remaining unamortized domestic R&E balances on their 2025 tax return (either 100% in 2025 or ratably across 2025 and 2026) under automatic accounting method change procedures. A formal Form 3115 is waived when this statement is attached to a timely filed original return.

STATEMENT IN LIEU OF FORM 3115: AUTOMATIC CHANGE IN METHOD OF ACCOUNTING UNDER REV. PROC. 2025-28, SECTION 7.02 (DCN 273)

- **Taxpayer Name:** Prairie Ridge Farms, Inc.
- **Taxpayer Identification Number (TIN/EIN):** 98-7654321
- **Taxable Year of Change:** Calendar Year Ending December 31, 2025
- **Return Type:** Original Form 1120 (or Form 1065 / Form 1120-S)
- **Designated Automatic Accounting Method Change Number:** 273

1. **Accounting Method Change Description:** Pursuant to OBBBA §70302(f)(2)(A)(i), IRC §446(e), and Section 7.02 of Rev. Proc. 2025-28 (modifying Rev. Proc. 2025-23), the taxpayer is changing its method of accounting for the remaining unamortized amount of domestic research or experimental expenditures previously capitalized under former IRC §174 for taxable years beginning after December 31, 2021, and before January 1, 2025.

2. **Implementation on a Cut-Off Basis:** In accordance with Rev. Proc. 2025-28, Section 7.02(5)(a)(i) and Section 7.02(5)(a)(ii)(G)(II), the taxpayer declares that it is implementing this method change on a cut-off basis. No adjustments under IRC §481(a) are permitted or required.

3. **Recovery Method Selection:** In accordance with Rev. Proc. 2025-28, Section 7.02(2)(f)(i) and Section 7.02(5)(a)(ii)(G)(I), the taxpayer hereby declares its election to amortize and deduct the remaining unamortized amount in full in its first taxable year beginning after December 31, 2024 (the 2025 taxable year).

4. **Determination of Unamortized Amount:** As of January 1, 2025, the taxpayer's total remaining unamortized balance of domestic R&E expenditures capitalized under former IRC §174 equals $34,600. This remaining balance consists of unamortized carryforward amounts from the 2022, 2023, and 2024 taxable years attributable to:

    - **Crop-yield optimization pilot trials;**
    - **Livestock performance monitoring software development; and**
    - **Soil carbon sequestration experiments.**

5. **Deduction Claimed:** The taxpayer claims an amortization deduction of $34,600 on its timely filed original Federal income tax return for the 2025 taxable year.

Signature:_____

Name/Title: Sarah Jenkins, Chief Financial Officer

Date: [Insert Date Filed]

Optional Election Statement #3

Late Election to Take a Reduced Research Credit Under IRC §280C(c)(2) (Filed with Amended Return/AAR)

> **Note:** A small business taxpayer making a retroactive §174A expensing election under Pathway 1 had the option to make a timely late election under IRC §280C(c)(2) on an amended return on or before July 6, 2026. Making this election preserves the full dollar-for-dollar R&E deduction under §174A by reducing the research credit itself by the maximum corporate tax rate under IRC §11(b) (21%), rather than reducing the R&E expense deduction by the full credit under IRC §280C(c)(1).

FILED PURSUANT TO SECTION 4.03 OF REV. PROC. 2025-28

- **Taxpayer Name:** Cedar Valley Ranch, LLC
- **Taxpayer Identification Number (TIN/EIN):** 12-3456789
- **Taxable Year Affected:** Calendar Year Ending December 31, 2023
- **Return Type:** Amended Form 1065 (or Administrative Adjustment Request)
- **Filing Date:** [Filed on or before July 6, 2026]

1. **Reduced Credit Election:** Pursuant to OBBBA §70302(f)(1)(D), IRC §280C(c)(2), and Section 4.03 of Rev. Proc. 2025-28, the taxpayer hereby elects to reduce the research credit determined under IRC §41(a) for the 2023 taxable year in lieu of reducing its allowable domestic R&E expense deduction under IRC §174A.

2. **Eligibility and Small Business Declarations: The taxpayer declares that:**
   - It has made an election under Section 3 of Rev. Proc. 2025-28 to apply IRC §174A retroactively to the 2023 taxable year;
   - It meets the gross receipts test under IRC §448(c) and Treas. Reg. §1.448-2(c) for its first taxable year beginning after December 31, 2024 ($31 million or less); and
   - It is not a tax shelter prohibited from using the cash method of accounting under IRC §448(a)(3) and §448(d)(3) for its first taxable year beginning after December 31, 2024.

3. **Credit and Deduction Calculations:**

   - Total domestic R&E expenditures incurred in 2023: $92,000.
   - Gross research credit determined under IRC §41(a) (before reduction): $7,360.
   - Statutory reduction under IRC §280C(c)(2)(B) ($7,360 × 21% maximum corporate tax rate): $1,546.
   - Adjusted, reduced research credit claimed: $5,814 ($7,360 - $1,546).
   - Allowable domestic R&E deduction under IRC §174A: $92,000 (unreduced by the research credit).

4. Form 6765 Attachment: An amended Form 6765 (Credit for Increasing Research Activities) marked "FILED PURSUANT TO SECTION 4.03 OF REV. PROC. 2025-28" is attached to this return, reflecting the reduced credit calculation under question A of the form.

5. **Irrevocability:** The taxpayer acknowledges that pursuant to Rev. Proc. 2025-28, Section 4.03(4), this late IRC §280C(c)(2) election is irrevocable once made.

Signature: _____

Name/Title: John Marshall, Managing Partner

Date: [Insert Date Filed]

Practitioner Filing Guidelines and Observations

- **Attachment Instructions:** When filing electronically, each election statement must be attached as a separate PDF document clearly labeled with the relevant Revenue Procedure citation.
- **Waiver of Form 3115:** For taxpayers utilizing the recovery of unamortized amount method under Pathway 2, the requirement under Treas. Reg. §1.446-1(e)(3)(i) to file a standard Form 3115 is waived, and the duplicate copy filing requirement to the IRS National Office is also waived when Sample Statement #2 is attached to a timely filed original return.
- **Irrevocability:** Elections made under Sections 3, 4, or 6 of Rev. Proc. 2025-28 are irrevocable once made.
- **Audit Records:** Taxpayers must retain contemporaneous books and records substantiating the character of research expenditures, technical uncertainty, experimental processes, and wage allocations under IRC §41 and IRC §174A. Taxpayers utilizing automatic transition method changes do not receive audit protection for pre-2025 domestic research expenditures.

R&D Tax Credits for Agriculture and Farmers (How to Identify Clients)

1. The credit is legitimate, but not every farming activity qualifies.

There has been a noticeable increase in firms promoting research and development (R&D) tax credits to agricultural businesses. Farmers can qualify, but the activity must satisfy the requirements of IRC §41. The fact that a farmer tries something new, experiments with a different crop, or changes farming practices does not automatically qualify the activity for the credit.

2. The best candidates are farmers engaged in genuine experimentation.

The strongest candidates are clients developing or evaluating new agricultural processes, testing alternative production methods, or attempting to resolve technical uncertainties. Examples might include developing new irrigation or nutrient-delivery systems, experimenting with new methods of livestock production, or developing improved processes for handling and storing agricultural products. The important question is whether the activity involves a qualifying process of experimentation - not simply whether the farmer is trying something different.

3. Routine farming activities generally do not qualify.

Ordinary crop production, routine soil testing, standard fertilizer applications, conventional breeding practices, and the adoption of established farming technologies generally will not qualify merely because they involve technical knowledge or some degree of trial and error. Applying an existing technology in a new location or under different weather conditions is not necessarily qualified research, either. The taxpayer must establish that the specific activity satisfies the statutory requirements.

4. Pay particular attention to the four-part test.

Under IRC §41(d), qualified research generally must satisfy four requirements:

- **Permitted purpose:** The activity must relate to developing or improving a product, process, technique, invention, or qualifying software, with improvements measured in terms of function, performance, reliability, or quality.
- **Elimination of uncertainty:** The taxpayer must seek to discover information that would eliminate uncertainty concerning the capability or method of developing or improving the product or process, or its appropriate design.
- **Process of experimentation:** The taxpayer must engage in a systematic process of evaluating alternatives to resolve the uncertainty.
- **Technological in nature:** The research must fundamentally rely on principles of physical or biological science, engineering, or computer science.

There are also statutory exclusions that must be considered. Satisfying the four-part test does not end the analysis.

5. Livestock operations may present opportunities, but documentation matters.

A livestock producer developing a new feeding system, evaluating alternative production processes, or testing a novel environmental-control system may have qualifying activities. However, routine feed trials, ordinary herd management, and standard breeding or husbandry practices are not automatically eligible. The taxpayer must establish that the particular research meets the statutory requirements and is not subject to an exclusion.

6. Documentation is often the weakest part of the claim.

A well-substantiated claim should be supported by contemporaneous records identifying the technical uncertainty, the alternatives considered, the tests performed, the results obtained, and the

conclusions reached. Depending on the activity, useful records may include trial protocols, production data, laboratory results, engineering analyses, and records of employee time and research expenditures.

A study prepared years after the activities occurred deserves particular scrutiny. The fact that a consultant can construct a research narrative does not establish that qualified research actually occurred.

7. Be cautious about firms promising large credits based on a percentage of farm revenue or expenses.

The credit is not calculated simply by applying a percentage to farm income, total operating expenses, fertilizer costs, or equipment purchases. Qualified research expenses generally include eligible wages, supplies used in qualified research, and certain contract research expenses, subject to the applicable statutory rules. The expenditures must be connected to qualifying research activities.

Farmers also need to understand that equipment purchases and land improvements do not automatically become qualified research expenses simply because they are used in an experimental project.

8. Do not overlook the tax-return implications and potential audit exposure.

Before a study is recommended, the taxpayer's realistic prospect of conducting or having conducted qualifying research should be evaluated. The analysis should also address whether the expenditures can be substantiated and whether the anticipated benefit justifies the cost of preparing and defending the claim. The preparer should evaluate the applicable credit computation, filing requirements, limitations, and any interaction with deductions for the same expenditures.

Agricultural R&D credits can be valuable, but they should be approached as a technical tax issue rather than an opportunity to generate credits for ordinary farming operations.

Key questions to ask before recommending a study

The following questions can help screen farm clients:

1. Have you developed a new production process, piece of equipment, or method of handling crops or livestock?
2. Have you conducted structured experiments to resolve a technical problem for which the answer was not readily available?
3. Did you document the alternatives tested, the results, and the costs incurred?
4. Were employees or outside contractors engaged in actual experimentation, and can their time and expenses be identified?

5. Is the proposed claim based on identifiable research activities, or is a consultant simply reviewing the farm's existing expenses for potential credits?

   Note: The principal caution is that a farmer's business does not qualify merely because agriculture involves biological processes and constant adaptation to changing conditions. The research must meet the statutory requirements, and the taxpayer must substantiate the claim. Particular scrutiny is warranted for studies that appear to treat routine crop-production decisions or ordinary livestock management as qualified research.