

Morgan Lewis

SIXTH ANNUAL

**RESEARCH &  
DEVELOPMENT  
TAX CREDIT**

**SYMPOSIUM**

*Welcome  
Remarks*

Alex Sadler, Tom Linguanti & Doug Norton | November 9, 2020  
Session 1

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# What a Difference a Year Makes (DC)



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# Or Less than a Year (Silicon Valley)



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# Silver Linings

- More time with family & pets
- No commutes
- Embracing technology



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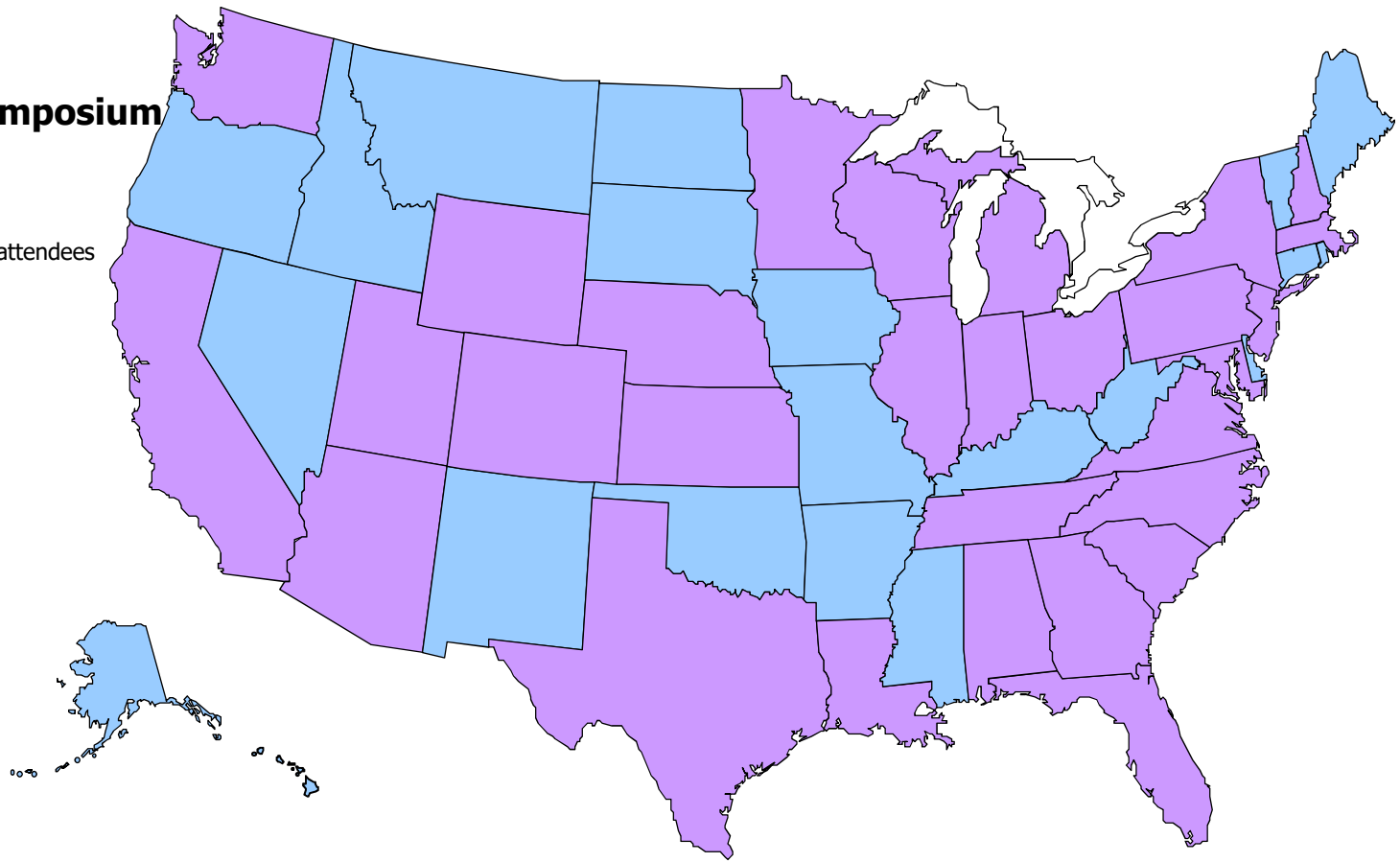
## The 2020 All-Virtual Symposium

- Total # of registrants – Nearly 450 for each session day
- Total # of companies represented – More than 80
- Total # of providers represented – More than 70

# 2020 ML R&D Symposium

## Attendees by State

 = states represented by attendees



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# 2020 R&D Tax Credit Symposium

## Companies Represented

- AAA
- ADP
- Aimtek
- Amazon
- Ameriprise
- Applied Materials
- Bastille Networks
- Best Buy
- BMW of North America
- Boeing Corporation
- Brunswick Corporation
- Cadence Design Systems
- Capital One
- CH Robinson
- Cisco
- Corsair Memory
- Dow Chemical
- DXC Technology
- Forever, Inc.
- Google
- Invitae Corporation
- Johnson Matthey
- Lionsgate
- Lockheed Martin
- Madrigal Pharmaceuticals
- Marvell Semiconductor
- Maxim Integrated Products
- McCormick & Company
- Medtronic
- Micron Technology
- Nexteer Automotive
- NextEra Energy
- NVIDIA Corporation
- Oracle
- Olympus Corporation
- Polymer Enterprises
- PTC Therapeutics
- Pzena Investment Management
- Robinhood Markets
- Sealed Air Corporation
- Silicon Laboratories
- SMART Modular Technologies
- SoftBank Telecom America
- Steel Dynamics
- Teledyne/LeCroy
- The Coca-Cola Company
- The New York Times Company
- Toyota
- Twitter
- University of Phoenix
- Volta Industries
- Walmart
- Wells Fargo
- Western Digital

# 2020 R&D Tax Credit Symposium

## Providers Represented

- alliantgroup
- Alvarez & Marsal Taxand
- Anchin Block & Anchin
- Anglin Reichmann Armstrong
- Aprio
- Bedford Team
- BCP Engineers & Consultants
- BKD
- Black Line Group
- Calvetti Ferguson
- Cherry Bekaert
- CohnReznick
- Crowe
- Dixon Hughes Goodman
- DST Advisory Group
- Eide Bailly
- Ernst & Young
- Grant Thornton
- Herbein + Company
- Kaufman Rossin
- Koch Siedhoff Hand & Dunn
- KPMG
- Lundsden & McCormick
- Massie R&D Tax Credits
- McGuire Sponsel
- Moss Adams
- Plante Moran
- PriceWaterhouseCoopers
- R&D Incentives Group
- Ryan
- Tanner
- Tax Incentive Solutions
- Warren Averett
- Wipfli
- Withum

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# Faculty Firms



FUJIFILM



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## Special Thank You

The logo for DHG, consisting of the letters 'D', 'H', and 'G' in a bold, white, sans-serif font, centered within a solid blue rectangular background.

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## 15 AREAS OF SERVICE

Antitrust & Competition	Intellectual Property
Corporate & Business Transactions	Investment Management
eData	Labor & Employment
Employee Benefits/Executive Compensation	Litigation
Energy	Private Client
FDA	Structured Transactions
Finance	Tax
	Telecommunications, Media & Technology

## 11 FOCUSED INDUSTRY SECTORS

Automotive	Energy	Investment Funds	Sports
Banking	Healthcare	Life Sciences	Technology
Education	Insurance	Retail	

**31 OFFICES**  
**ACROSS 17**  
**TIME ZONES**



# MORGAN LEWIS TAX

**BREADTH OF OUR  
PRACTICE**



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**Tier 1, Tax Law**  
US News & World  
Report/Best Lawyers  
(2018-2020)

**Band 1,  
Tax (DC)**  
Chambers USA  
(2017-2020)

**Tax Practice  
Group of the  
Year**  
Law360  
(2017)

**US Tax Firm  
of the Year  
(San Francisco &  
Silicon Valley)**  
International Tax Review  
(2018)

**Tier 1,  
Tax Litigation**  
US News & World  
Report/Best Lawyers  
(2018-2020)

**Band 1,  
Tax Controversy  
(Nationwide)**  
Chambers USA  
(2017-2020)

**Tier 1,  
Tax: Contentious  
(US)**  
Legal 500  
(2017-2020)

**Tier 1, Nonprofit  
and Tax-Exempt  
Organizations**  
Legal 500 US  
(2017-2020)

**Tier 1,  
Transfer Pricing**  
World Transfer Pricing  
(2020)

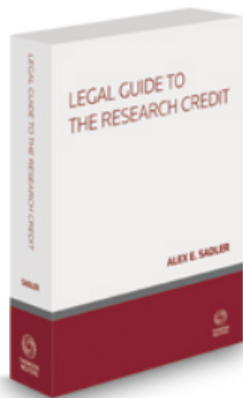
## R&D Controversy Experience

- Chemicals & plastics
- Pharmaceuticals
- Medical device
- Steel & ironmaking
- Automotive supply chain
  - Subsystems
  - Tires
  - Tooling
- Aerospace
- Paints and coatings
- Assembly lines
- Software development
- Government contracting
- Engineering & construction
- Oil & gas
- Food & agriculture
- Retail
- Energy
- CPA & advisory firms

## **R&D Controversy Experience**

- Position development
- Pre-filing review & opinions
- Audit defense strategy
- Appeals
  - Fact development
  - Protest preparation
  - Conference presentation & settlement negotiations
- Litigation – Tax Court, Court of Federal Claims, and district courts

# Thought Leadership & Professional Network



*Legal Guide to the Research Credit* comprehensively reviews and distills the legal principles pertaining to the research credit – a credit that has broad application to U.S. businesses of all sizes and industries. It is one of the most widely claimed and important federal income tax incentives for corporate America. However, due to the complexity of the research credit, as well as the subjective and fact-intensive nature of the qualification standards, it is also a frequent source of controversies between taxpayers and the IRS. This book will be of interest to law firms, accounting firms, corporate tax departments, the IRS, and academia.

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A promotional graphic for the Morgan Lewis Sixth Annual Research &amp; Development Tax Credit Symposium. The top half features a dark purple background with a glowing, wireframe globe and colorful bokeh lights. The text 'Morgan Lewis' is at the top, followed by 'SIXTH ANNUAL RESEARCH &amp; DEVELOPMENT TAX CREDIT SYMPOSIUM' in large, bold, white and purple letters. Below this, the text reads: 'Register now for Morgan Lewis's Sixth Annual Research &amp; Development Tax Credit Symposium. New for this year: we are going virtual! Live-streamed sessions will be accessible from the comfort of your own home from Monday, November 9, 2020 through Friday, November 13, 2020. We will be presenting a full program of robust, varied content and speakers, as always—but over several days.'

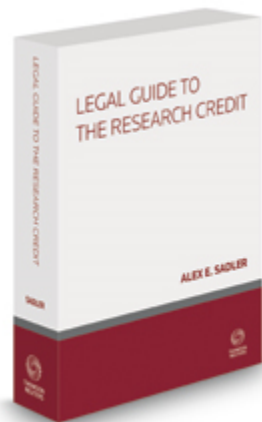


# Monday's Program – November 9, 2020

12:00 pm – 12:20 pm	<b>Welcome Remarks</b> Morgan Lewis: Alex Sadler and Doug Norton
12:20 pm – 1:20 pm	<b>Hot Topics &amp; Technical Developments</b> Ernst & Young: Alexa Claybon
1:20 pm – 1:25 pm	<b>BREAK</b>
1:25 pm – 2:25 pm	<b>Implications of Industry 4.0 on the Research Credit</b> Crowe: Shelby Ford Crowe: Chelsea Alspaugh
2:25 pm – 2:30 pm	<b>BREAK</b>
2:30 pm – 3:30 pm	<b>Research Credit Pitfalls, Opportunities, and Best Practices During Coronavirus (COVID-19)</b> Dixon Hughes Goodman: Adam Quattlebaum Plante Moran: Donny Lucaj
3:30 – 3:35 pm	<b>Quiz</b>
5:00 pm – 6:00 pm	<b>Informal Networking Session with Panelists and Attendees</b>

## More R&D Tax Credit Quiz Fun to Come...

- Quiz each day after substantive program has finished.
- Attendees who complete the quiz and answer 15+ questions correctly will be entered into a raffle to win one of two R&D treatises raffled each day!
- Answers must be submitted via WebEx.
- Winners will be announced the following day.



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**RESEARCH &  
DEVELOPMENT  
TAX CREDIT**

**SYMPOSIUM**

**HOT TOPICS & TECHNICAL DEVELOPMENTS**

Alexa Claybon, Principal, Ernst & Young

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# Presenter



Alexa Mortenson Claybon  
Principal  
Denver, Colorado

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# **HOT TOPICS & TECHNICAL DEVELOPMENTS**

# Hot Topics & Technical Developments - Agenda

- **New Administrative Guidance**
- **Other New Administrative Items**
- **Courtroom Update**
- **Examination Trends**
- **Other R&D Topics**

# **NEW ADMINISTRATIVE GUIDANCE**

# New Administrative Guidance

## 2020 IRS LB&I compliance campaign on R&D issues

- In early 2020, LB&I added a new active compliance campaign concerning research credits under IRC §41 and research and experimental expenditures under §174
  - LB&I characterized these two issues as "some of the most prevalent tax issues within [LB&I], utilizing significant examination and taxpayer resources"
- LB&I said the campaign will include issue-based examinations, form updates, and requests for guidance, in addition to other treatment streams as the campaign progresses
  - "The campaign objective is to promote voluntary compliance, focus resources on the highest risk research issues and increase consistency of examinations," LB&I said



# New Administrative Guidance

## **2020 IRS LB&I Directive on examinations of research issues**

- Effective for any new research issues identified on or after April 1, 2020, the directive applies to LB&I examinations of Industry Cases, Large Corporate Compliance cases, and all claims and amended returns
  - The directive, however, does not apply to Research Issues Campaign Inventory or Compliance Assurance Process program cases
- The directive identifies the Research Risk Review Team (RT) as "a national strategy to improve the identification of the highest risk research issues under 41 and 174"
  - The RT consists of subject matter experts, engineers, revenue agents, and other specialists who are to help the field employees with the identification and risk assessment of issues

## New Administrative Guidance

The directive outlined the following process for evaluating claims:

- Case and specialist managers, in collaboration with the agent and specialist, complete the Issue Selection and Collaboration Process (preliminary risk analysis to select issues with the highest compliance issues)
- The RT's review and concurrence are required if: (A) the case and specialist managers agree to examine the research issue, or (B) the case and specialist managers disagree on whether to examine the research issue
  - The RT *does not* need to review and concur on the need to examine the research issue if the case and specialist managers agree not to examine the research issue
- In certain situations, the RT must be contacted for *possible review* and concurrence, such as PFAs with research issues or amended returns to claim the research credit that are received during exam

## New Administrative Guidance

### **2020 IRS LB&I Directive (Qualified Research Safe Harbor) – revision to 2017 Directive**

- September 10, 2020 revision to the 2017 LB&I Directive allowing the use of GAAP R&D amounts to be accepted by the IRS as qualified research expenses for purposes of section 41
- Key revisions to the 2017 Directive:
  - Refines the definition of an eligible taxpayer
  - Expands and clarifies the examination guidance to be followed by the audit teams
  - Additional documentation requirements
  - Excludes costs for software not sold, leased, or otherwise marketed, as well as website development costs

# Polling Question 1

**What causes the most concern in defending your company's R&D credit?**

- Lack of documentation
- Base periods
- Contract terms (rights/risk analysis)
- Whether the company is performing qualified research

# **OTHER NEW ADMINISTRATIVE ITEMS**

# Other New Administrative Items



## R&D IDRs

- New, standard overbroad IDR requests
  - **Non-qualified projects**
  - **Street addresses**
  - **Mapping between QREs and GL accounts**



## Rev. Proc. 2000-50 IDR

- Unexpected interest in 2017 method changes for software development costs
  - **Exam team interested in contract terms (payment terms, warranties) to determine whether the development risk was a burden on the taxpayer or the vendor**



## LB&I roundtable discussion

- On November 5<sup>th</sup>, the IRS hosted a R&D credit roundtable discussion on opportunities for improvements and efficiencies in examination of research credit issues

# **COURTROOM UPDATE**

## Courtroom Update

### ***Populous Holdings, Inc. v. Commissioner, Tax Court (order signed Dec. 6, 2019)***

- Issue was whether the research performed by the taxpayer was funded (and therefore excluded from the definition of qualified research)
  - No controversy regarding whether the taxpayer performed qualified research
- The five contracts reviewed by the court were fixed price contracts. None of the contracts expressly required research, but all contracts granted the clients the right to review and approve design documents and dispute invoices
  - Court focused on which party would bear the risk of the research's failure
  - Court found that taxpayer was not prohibited from using the research it performed
- Stipulated decision of no deficiency entered Jan. 16, 2020



## Courtroom Update

### ***Harper v. U.S.*, District Court for the S.D. of California (April 25, 2019)**

- Case brought by the taxpayers asserting the government erroneously denied their refund claims
- Summary judgment motion by government challenging the court's subject matter jurisdiction
  - Insufficient factual basis provided with claim for refund
- Appeal is pending in the Court of Appeals for the Ninth Circuit

## Courtroom Update

### ***Audio-Technica U.S., Inc. v. U.S.*, 963 F.3d 569 (June 26, 2020)**

- The taxpayer won a jury trial on the question of whether the taxpayer was conducting qualified research
- The taxpayer had filed a motion to prevent the government from introducing evidence regarding the taxpayer's fixed base percentage, which the district court granted
  - Government had previously entered into settlements with the taxpayer applying the same fixed base percentage used by the taxpayer
- Court of Appeals for the Sixth Circuit found that judicial estoppel was not triggered by the government's previous settlements, and remanded for a determination of the taxpayer's fixed base percentage

## Courtroom Update – Pending Cases

### ***United States v. Oehler*, Case No. 1:18-cv-7330 (N.D. Ill.)**

- Claim by electrical engineer contractor for credit
- Government's summary judgment motion denied; scheduled for trial
  - Motion did not provide a basis for summary judgment, but related to discovery disputes

### ***J.G. Boswell Co. & Subs. v. Commissioner*, Docket No. 2408-19 (Tax Ct.)**

- Agricultural company's claim for credit for supply costs in experiments on its crops
- Whether the supplies are "indirect" expenses
- Cross-motions for summary judgment pending

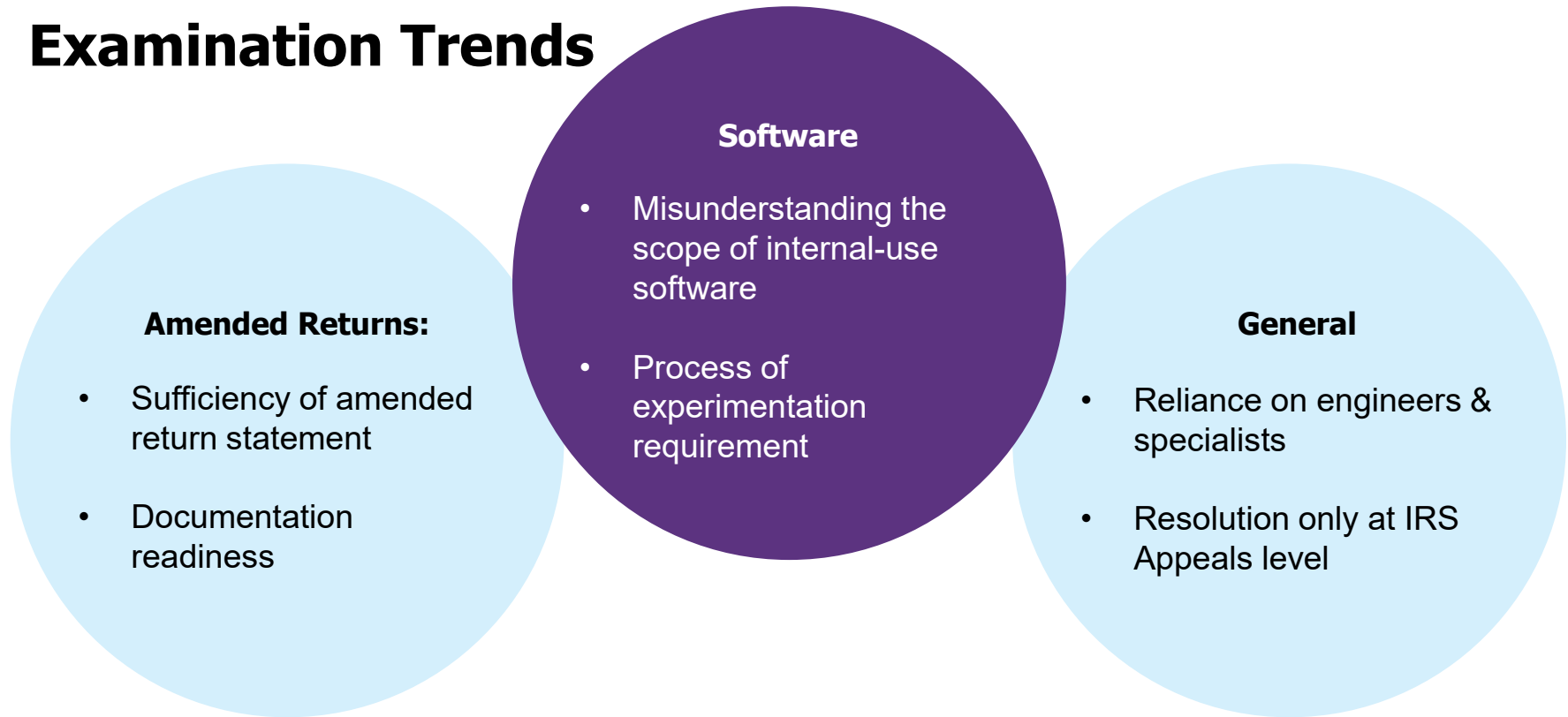
## Polling Question 2

**What is the company's general position with respect to litigating to defend its R&D credit?**

- The credit is not significant enough for our company to litigate
- Generally only litigate if the IRS settlement offer is below the amount taken as a tax benefit on our financial statements
- We generally trade this tax benefit to preserve another
- We generally are satisfied with the result at exam/IRS Appeals

# EXAMINATION TRENDS

# Examination Trends



## Polling Question 3

**Has your company's R&D exam process changed over the last few years?**

- We haven't been examined on the R&D credit in the last few years
- It's gotten easier
- It's stayed about the same
- It has gotten more difficult

# **OTHER R&D TOPICS**



# TCJA Amendment to Section 174



## Capitalization of costs

Capitalized and amortized over 5 years if R&E is conducted in the U.S.

Capitalized and amortized over 15 years if R&E is conducted outside of the U.S.

Therefore, §59(e) election no longer available



## Definition of computer software development

Computer software development costs are specifically included in the definition of an R&E expenditure under §174

Therefore, Rev. Proc. 2000-50 is no longer applicable to software development costs (still applicable to software acquisition costs)



## Recovery of costs

Taxpayers cannot recover costs of disposed R&E earlier than end of the required amortization period

Midyear start of amortization

# TCJA Amendment to Section 174

## Most significant issues related to the section 174 amendment

- Build versus buy
- §174 versus §162
- Method change
- Unintended consequences/interactions

## Polling Question 4

**What is the most likely way your company will respond to upcoming capitalization of R&D expenses under section 174?**

- Bring more R&D onshore
- Acquire the assets that we currently develop
- Re-evaluate the kinds of costs that are currently treated by the company as section 174 costs
- We likely will not make any changes

# Biography



**Alexa Mortenson Claybon**

Denver, Colorado

T +1.303.906.9721

E [Alexa.Claybon@ey.com](mailto:Alexa.Claybon@ey.com)

Alexa Mortenson Claybon is a principal at EY's National Tax Department in Washington, DC and is EY's Research Credit Technical Leader. Prior to joining EY, she was an Attorney Adviser in the Treasury Department's Office of Tax Policy (2011-2015), working with the IRS Chief Counsel's office to develop regulations and other guidance. Alexa worked primarily with issues concerning the tax treatment of research costs under sections 41 and 174.

She has been a guest lecturer for the Tax Executives Institute, Denver Tax Institute, Tulane Tax Institute, American Bar Association, and other organizations.

Alexa earned a JD from Northeastern University and an LLM (Tax) from Georgetown University Law Center.

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**5 MINUTE BREAK...WE WILL RESUME SHORTLY**

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# RESEARCH & DEVELOPMENT TAX CREDIT

**SYMPOSIUM**

**IMPLICATIONS OF INDUSTRY 4.0 ON THE RESEARCH CREDIT**

Shelby Ford, Partner, Crowe LLP

Chelsea Alspaugh, Manager, Crowe LLP

November 9, 2020

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# Presenters



Shelby Ford, CPA  
Crowe LLP, Partner  
Knoxville, TN



Chelsea Alspaugh, CPA  
Crowe LLP, Manager  
Knoxville, TN

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# **IMPLICATIONS OF INDUSTRY 4.0 ON THE RESEARCH CREDIT**

## Polling Question 1

**Have you heard of Industry 4.0 prior to this slide?**

- a. I know a lot about it.
- b. I know a little.
- c. Not Familiar



# History Lesson

1st



2nd



3rd



4th



# Word on the Street and Around the Office

We want more.....

**Robots**

Do it cheaper.

**Technology**

Keep production going without people at work.

*“By now, this new data- and technology-driven revolution, powered by artificial intelligence and machine learning, is emerging in every industry sector.” - Forbes*

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Fix it quicker.

**Digitization**

Do it better and quicker, but do not spend money.

**Machine**

**Learning**

*“...critical for enterprises to embrace this new industrial age.” –Claudio Scola, Lumen*

Work smarter, not harder.

**Automate**

We have an issue.

*“...century’s worth of technological advancements will happen over the next five years.” – Ryan Daws, TechForge Media*

## Polling Question 2

### How did COVID-19 affect your business?

- a. Shut down for period of time
- b. Adjusted schedules and workforce to allow for social distance
- c. Business as usual
- d. Fully transitioned to remote working

# Industry Wide Changes

- Manufacturing
  - Smart Factory
- Financial Services
  - No brick and mortar
- Life Sciences
  - Connectivity
- Retail
  - On-demand supply chain

# Impacts from I4.0

- Spend to Save

- Organizational Changes

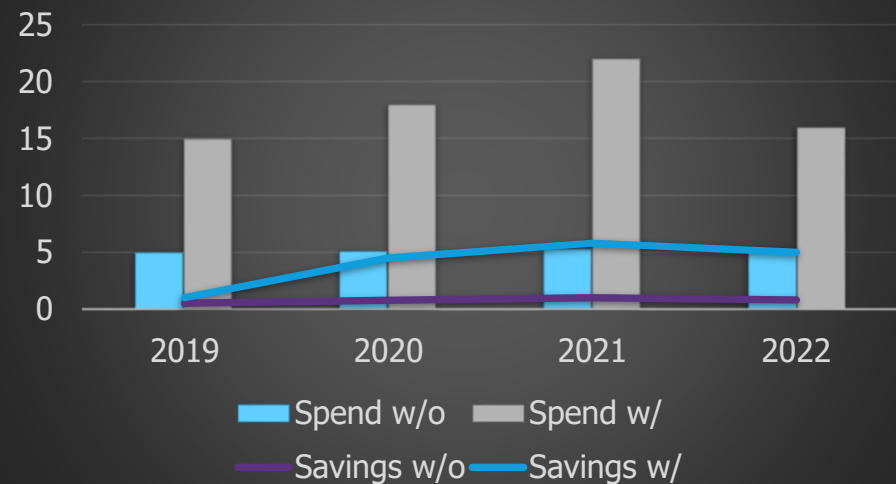


- COVID-19



- Now vs. then

## Spend vs. Save (in MM)



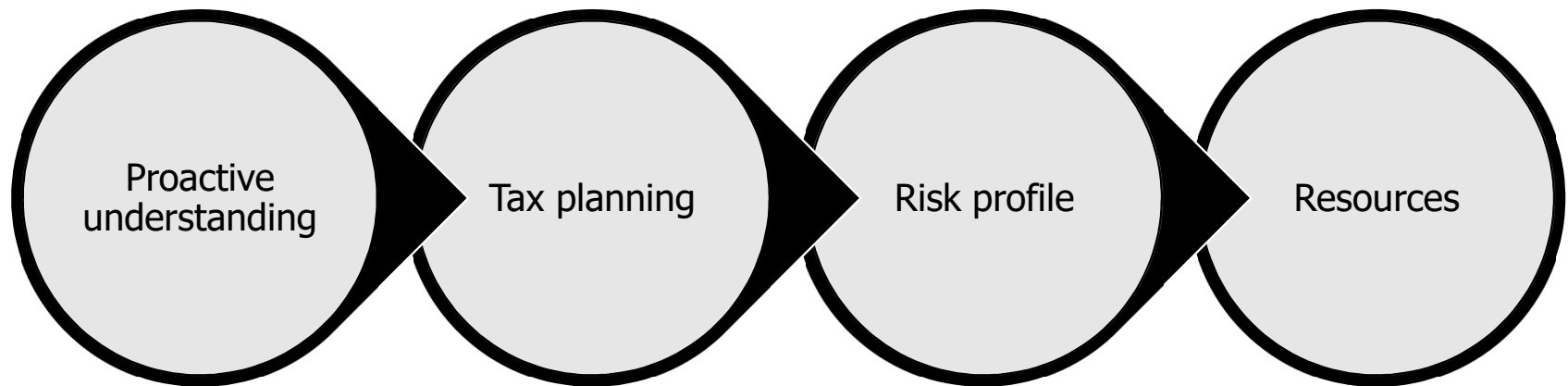


## Polling Question 3

**Is your company investing in technological initiatives, linked with formal I4.0 strategies?**

- a. Yes
- b. No
- c. This is always part of our normal operational budget
- d. I have no clue
- e. Not applicable

# Why Does This Matter?



# Calculation Example

	Before I4.0	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Current Year QREs</b>	<b>100</b>	<b>200</b>	<b>175</b>	<b>150</b>	<b>125</b>	<b>100</b>
BP Year 1	100	100	200	175	150	125
BP Year 2	100	100	100	200	175	150
BP Year 3	100	100	100	100	200	175
<b>Total Base QREs</b>	<b>300</b>	<b>300</b>	<b>400</b>	<b>475</b>	<b>525</b>	<b>450</b>
Base Amount	50	50	67	79	88	75
Incremental QREs	50	150	108	71	38	25
<b>Net Credit</b>	<b>6</b>	<b>17</b>	<b>12</b>	<b>8</b>	<b>4</b>	<b>3</b>
<b>RoR on QREs</b>	<b>5.5%</b>	<b>8.3%</b>	<b>6.8%</b>	<b>5.2%</b>	<b>3.3%</b>	<b>2.8%</b>

# INDUSTRY EXAMPLES



# Widget XYZ

**Goal:** reduce defects from line 5

**Solution:** new vision system



\$3.5M

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**Goal:** reduce scrap rate, man hours, and down time for line 3

**Solution:** new equipment using machine learning and algorithms to predict stamping process



\$10.5M

 Crowe

# Widget XYZ

**Goal:** reduce defects from line 5

**Solution:** new vision system

**Goal:** reduce scrap rate, man hours, and down time for line 3

**Solution:** new equipment using machine learning and algorithms to predict stamping process



*\$14M of additional R&D spend*

*\$770,000 of additional credit*

\$3.5M

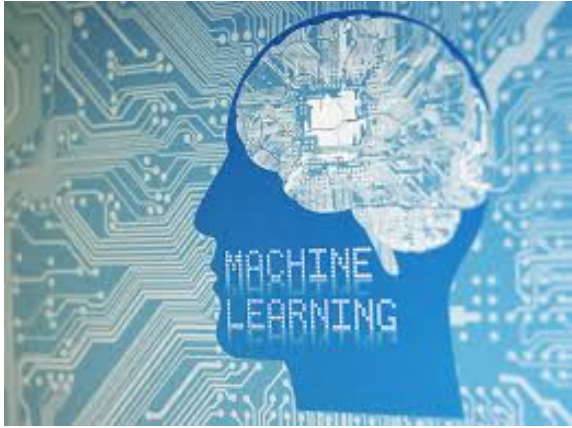
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\$10.5M

 Crowe

# Z Clothing Store



# Z Clothing Store



***\$20M of new R&D spend***



***\$1.1M of credit***



# Med Device ABC Co



## Med Device

*\$50M of additional R&D spend*

*\$2.8M of additional credit*

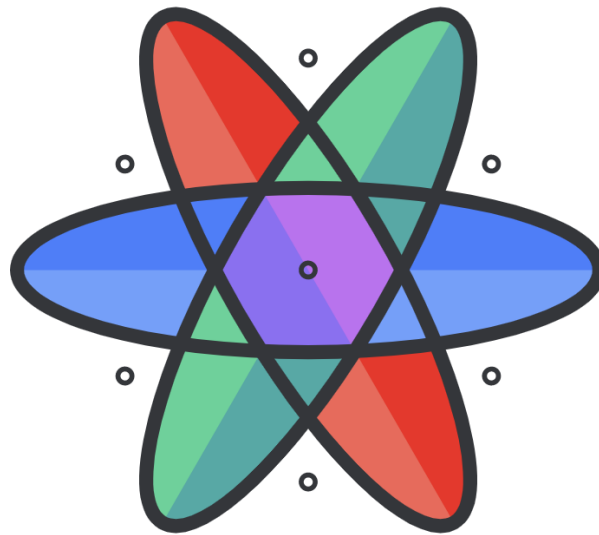
**NEW REVENUE**

# Tax Savings / Attack the ROI

- Long-Term Benefits
- Immediate Savings



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 Crowe **68**

## Polling Question 4

**Do you foresee your company and / or your clients taking advantage of increased R&D spend related to I4.0?**

- a. Big budgets for technology
- b. We have to do this to stay competitive
- c. Budgets are locked down tight
- d. Not applicable

# Considerations During Qualifications

- Understanding the spend and credit impact *before* it happens
- Internal awareness → new positions for your claim
- The business component: product v process
- Project *intent*: business v. engineering
- Contemporaneous documentation
- Always bring it back to the 4 part test

## Biography



**Shelby S. Ford, CPA**

Knoxville, TN

T: +1.865.539.5618

E: [Shelby.Ford@crowe.com](mailto:Shelby.Ford@crowe.com)

Shelby Ford, CPA, is the partner-in-charge of Crowe LLP's national research and development tax credit practice. Shelby's 17 years of experience in public accounting are in the areas of tax consulting and tax compliance, including the past 14 years as a R&D tax credit expert. Her experience is focused on developing and tailoring customized work plans which strategically highlight and maximize a taxpayer's R&D claim, particularly with large public and private companies.

Shelby has experience with many industries but devotes a significant portion of her time assisting clients in the Life Sciences, Technology, and Aerospace industries as well as with Federal and State examination defense. She has recently taken on an additional role of Tax Chief Operating Officer of Crowe's Tax practice. Shelby began her career at Deloitte LLP in the Chicago and Atlanta offices and has been with Crowe LLP for the past 10 years. She earned her Bachelors and Master's Degrees from the University of Notre Dame.

## Biography



**Chelsea Alspaugh, CPA**

Knoxville, TN

T: +1.865.539.5627

E: [Chelsea.Alspaugh@crowe.com](mailto:Chelsea.Alspaugh@crowe.com)

Chelsea Alspaugh, CPA, is a Manager in Crowe LLP's National Tax Office – Federal Tax Consulting Solutions team. She has 7+ years of public accounting experience, focusing primarily on research and development tax credit studies. Chelsea is a leader in designing, tailoring, and managing specialized work plans to maximize and sustain a taxpayer's R&D claim, specifically for large corporate taxpayers within the manufacturing and distribution, medical device, software, and consumer product industries. She leads the group with technology solutions and technical expertise in areas including medical device and Industry 4.0. Chelsea earned her Bachelor of Science in Business Administration, Accounting, from the University of Tennessee and her Master of Taxation from Georgia State University.

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**Research Credit Pitfalls, Opportunities, and Best Practices during  
Coronavirus (COVID-19)  
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# Presenters



Donny Lucaj, CPA  
Plante Moran, PLLC – Sr. Manager  
Southfield, MI



Adam Quattlebaum, CPA  
Dixon Hughes Goodman, LLP – Partner  
Greenville, SC

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# **PITFALLS, OPPORTUNITIES, AND BEST PRACTICES DURING COVID-19**

**PPP LOAN FORGIVENESS**

**CARES ACT NOLS**

**SUSPENDED OPERATIONS**

**CHANGES TO BUSINESS OPERATIONS**

**VIRTUAL STUDIES**

# PPP Loan

## Background

- Paycheck Protection Program (PPP) was enacted into law on March 27, 2020 via the CARES Act
- The PPP program provides low-interest and potentially fully forgivable loans to business
- Administered by the Small Business Administration
- Loans are forgiven if spent on “qualified expenses”
  - Payroll costs (at least 60%)
  - Interest on mortgages
  - Rent
  - Utilities

## PPP Loan Forgiveness – Deductibility of Expenses

- **Application for Forgiveness** - Taxpayer must fill out an application requesting forgiveness, and furnish documents
- **Scenarios to consider:**
  - Forgiveness determination may happen after the tax return filing deadline for the year in which the expenses were actually paid
  - It is possible to have expenses paid in one tax year, and the forgiveness determination made in the following tax year
- **Deductibility** - The CARES Act does not specifically address the deductibility of expenses related to the PPP loan forgiveness. However, IRS Notice [2020-32](#) clarifies that no deduction is allowed under the IRC for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan pursuant to CARES Act

## PPP Loan Forgiveness – Effect on R&D Credit

- Qualified research expenses (QREs) are the amounts which are paid or incurred by the taxpayer that satisfy the §41 qualification requirements during the taxable year in carrying on any trade or business of the taxpayer.
- Absent legislative action by congress, the associated non-deductible expenses would not be included as part of the computation of QREs and the R&D credit.
- Expect to see smaller credits in 2020 but potentially larger credits in 2021-2023



# PPP Loan Forgiveness - Example

Year Ended:

December 31, 2020

XYZ Company, Inc.

Credit projection without PPP				
	2020	2021	2022	2023
Qualified Research Expenses	2,700,000	2,700,000	2,700,000	2,700,000
Alternative Simplified Credit (Section 280C Election)	199,987	167,448	147,307	149,310

Credit Projection with PPP				
	2020	2021	2022	2023
Qualified Research Expenses	2,000,000	2,700,000	2,700,000	2,700,000
Alternative Simplified Credit (Section 280C Election)	122,567	180,351	160,210	162,213

2020-2023 Credit without PPP: 664,052

2020-2023 Credit with PPP: 625,341

2020 Lost Credits from PPP 77,420  
% Credit reduction 39%

2020-2023 Lost Credits from PPP 38,711  
% Credit reduction 6%

## **POLLING QUESTION #1**

Are you expecting credits to decrease significantly due to the non-deductibility of forgiven PPP funds?

- a) Yes
- b) No
- c) Not sure
- d) I believe the expenses are deductible

## CARES Act – Impact on Statute of Limitations

- The CARES Act introduced net operating loss (NOL) provisions that may impact Statute of Limitations (SOLs) on Research Credits previously deemed "closed"
- Refresher on NOL Rules
  - Tax reform (2017) eliminated NOL carrybacks
  - Carryforwards limited to 80% of taxable income
  - CARES Act temporarily lifts these rules for NOLs generated in 2018 – 2020 tax years
  - Allows five-year NOL carrybacks
  - Many taxpayers are taking advantage of NOL carrybacks
- The IRS may offset a refund claim filed for adjustments unrelated to the claim, up to the amount of the refund claim (see *Lewis v. Reynolds*, 284 U.S. 281 (1932)).
- Summary – Extend Research credit study retention periods in consideration of NOL carrybacks

# CARES Act – NOL Example

- **Facts**

- Taxable income in 2013 – 2017
- Claimed R&D credits of \$1m in 2013
- As of 9/15/2019, statute of limitations closed for Tax years 2013 – 2016
- 2018 generated NOL of \$10m
- 2020 utilized CARES Act to carry 2018 NOL back to 2013

- **Results**

- 2018 NOL of \$10m carried back to 2013
- 2013 R&D credit can now be adjusted

## **POLLING QUESTION #2**

The CARES Act allows NOLs generated in 2018 – 2020 tax years to be carried back how many years?

- a) Two years
- b) Three years
- c) Four years
- d) Five years

# Suspended Operations

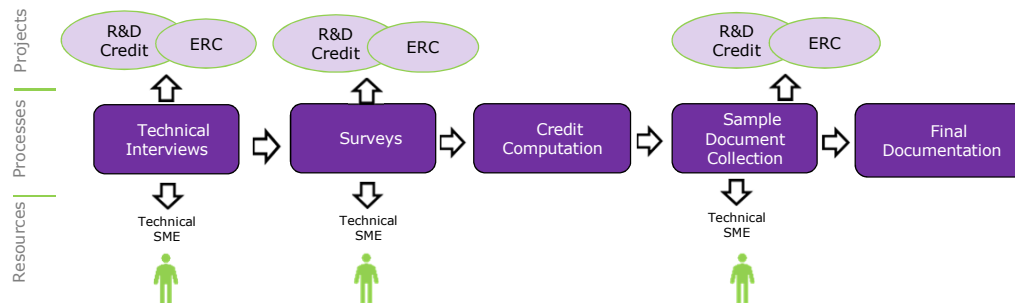
- Computing an employee's qualified wages involves the following fraction:
  - Hours spent in the conduct of qualified services; over,
  - Total hours spent in the conduct of all services
    - (sick leave, paid time off, and other non-service time are not included in the fraction).
- COVID-19 Impact on qualified wages
  - Assuming that employees were compensated during suspended operation, reduce total hours by the amount of time spent not-providing services
    - Non-service time varies by department, role, responsibility, and function
    - Consider leveraging **Employee Retention Credit** computation
    - If employees were not compensated during suspended operations, no adjustments are required

# Suspended Operations, Cont.

Limit business disruption by combining Employee Retention and R&D Credit Studies

- Taxpayer's that experienced complete or partial suspension of operations may qualify for the Employee Retention Credit (ERC)
- ERC involves a study of employees that were compensated despite being unable to provide services due to a Government order

## Project Synergies - R&D Credit and Employee Retention Credit



## **POLLING QUESTION #3**

In computing the ratio for qualified wages the denominator (total service hours) is reduced by:

- a) Paid Time Off
- b) Sick Leave
- c) Non-service hours (suspended operations)
- d) All of the above



# Change in Operations

## PPE



## Ventilator



## Distancing Devices



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# Change in Operations (cont'd)

## Robotics



## Industry 4.0



## Telemedicine



# Virtual Studies

HoloLens 2



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FaceTime



## **POLLING QUESTION #4**

Is your company or are your clients changing business operations (temporarily or permanently) to adjust to market needs?

- a) Yes
- b) No
- c) Not sure

**QUESTIONS**

## Biography



**Adam Quattlebaum, Partner**

Dixon Hughes Goodman, LLP  
Greenville, SC

T +1.864.213.5368

E [Adam.quattlebaum@dhg.com](mailto:Adam.quattlebaum@dhg.com)

Adam Quattlebaum is a Partner with Dixon Hughes Goodman where he leads the firm's Research & Development tax credits practice. He has experience serving publicly traded and closely held businesses in the manufacturing, construction, government contracting, and technology industries. He assists clients by helping maximize their credits and incentives and has extensive experience defending and successfully sustaining R&D credits through IRS and state examinations.

## Biography



**Donny Lucaj, CPA**

Plante Moran, PLLC  
Southfield, MI

T +1.248.223.3465

E [Donny.Lucaj@plantemoran.com](mailto:Donny.Lucaj@plantemoran.com)

Donny Lucaj is a senior manager in Plante Moran's tax solutions group. Donny specializes in identifying research and development credits, qualified business deductions, and opportunity zone incentives for taxpayers. He works with companies in diverse industries, including manufacturing, technology, pharmaceutical, chemical, and real estate. He's a member of the American Institute of Certified Public Accountants and Michigan Association of Certified Public Accountants. Donny obtained a B.A. in finance from Michigan State University, followed by an M.B.A. in accounting from Walsh College.

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**QUIZ**

## Quiz Question 1

Which one of the following is not a qualified research expense?

- A. Wages paid or incurred to an employee for the performance of qualified services
- B. Training and relocation expenses for employees engaged in research and development
- C. Amounts paid or incurred to third parties for the right to use computers in the conduct of qualified research
- D. 65 percent of any amount paid to a non-employee for qualified research

## Quiz Question 2

Congress enacted the research credit and made it permanent in which of the following years:

- A. 1954 and 2017
- B. 1996 and 2008
- C. 1986 and 2017
- D. 1981 and 2015

## Quiz Question 3

Which two US states don't observe Daylight Saving Time?

- A. Arizona and Hawaii
- B. Texas and Oklahoma
- C. Montana and Minnesota

## Quiz Question 4

The consistency requirement codified in section 41(c)(6) is applied at which of the following:

- A. The legal entity level
- B. The business component level
- C. The employee level
- D. The controlled group level

## Quiz Question 5

The definition of qualified research codified in section 41(d)(1) is applied at which of the following:

- A. The legal entity level
- B. The business component level
- C. The employee level
- D. The controlled group level

## Quiz Question 6

Lateral Epicondylitis is a condition commonly known by what name?

- A. Hamstring Strain
- B. Tennis Elbow
- C. Shin Splints

## Quiz Question 7

In which case did the Tax Court sustain qualified service percentage allocations based largely on the testimony of the taxpayer's vice president for product development?

- A. *Union Carbide*
- B. *Suder*
- C. *McFerrin*
- D. *Proctor & Gamble*



## Quiz Question 8

A taxpayer may make an election of the Alternative Simplified Credit under section 41(c)(5) on an amended return if it has not previously claimed the regular credit and the statute of limitations on assessments remains open.

- A. True
- B. False

## Quiz Question 9

Which country is known as the Land of White Elephant?

- A. China
- B. Japan
- C. Singapore
- D. Thailand

## Quiz Question 10

Before the Beatles were formed, John Lennon, Paul McCartney and George Harrison were originally members of which group?

- A. The Quarrymen
- B. Jay & The Americans
- C. Dion & The Belmonts
- D. The Diamonds

**INFORMAL NETWORKING SESSION  
5:00 PM ET WITH  
SPEAKERS AND ATTENDEES**