

Morgan Lewis

SEVENTH ANNUAL

RESEARCH & DEVELOPMENT TAX CREDIT SYMPOSIUM

Symposium Co-Chairs: Alex Sadler and Doug Norton
November 8-12, 2021

SESSION 2

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*Welcome
Remarks*

Welcome to Session 2!

- BUT, FIRST: quick run-through of answers to Monday's quiz, followed by live raffle to pick Session 1 winners...
- REMINDER: 1 more quiz after today's substantive programming; attendees completing the quiz and answering all or most of the questions correctly will be entered into a raffle to win one of two R&D treatises!
- More R&D tax credit quiz fun today:
 - Will close out today's program with quiz around 3:20 pm ET
 - Answers must be submitted via WebEx
 - Raffle winners for today's quiz will be announced Friday morning



QUIZ TIME

Answers to Monday's Quiz

(Session 1: Questions 1-5)

1. Treas. Reg. §§ 1.41-4(a)(d) and 1.6001-1(a) require a research credit study preparer to retain copies of notes of witness interviews conducted during study preparation in the event of an IRS audit of the claimed research credit.
False
2. Treas. Reg. § 1.41-4(a)(3)(iii) prescribes that the issuance of a patent by the Patent and Trademark Office provides conclusive evidence of qualified research activities as detailed within IRC § 41(d).
False
3. If a taxpayer performing research for another person retains no substantial rights in the research *and* if the payments to the researcher are contingent upon the success of the research, then neither the performer nor the person paying for the research is entitled to treat any portion of the expenditures as QREs.
True
4. Who proceeded Mary Jo White as SEC chair?
Elisse B. Walter
5. Which of the following expenses is not eligible to be treated as research or experimental expenditures under section 174?
The costs of a study of a taxpayer's R&D management organization to identify next-generation strategic development priorities.

Answers to Monday's Quiz

(Session 1: Questions 6-10)

6. In which of the following cases did the court conclude that the taxpayer's activities in performance of fixed-price contracts were "funded research" within the meaning of section 41(d)(4)(H) and Treas. Reg. § 1.41-4A(d)?
Meyer Borgman Johnson v. Commissioner
7. A taxpayer has developed software that allows its users to upload and modify photographs at no charge. The taxpayer earns revenue by selling advertisements that are displayed while users enjoy software that the taxpayer offers for free. The taxpayer also developed software that has interfaces through which advertisers can bid for the best position in placing their ads, set prices for the ads, or develop advertisement campaign budgets. Under the current regulations, are the items of software "developed ... primarily for the taxpayer's internal use" within the meaning of IRC § 41(d)(4)(E)?
No
8. Which one of these schools CANNOT boast of either Alex Sadler or Doug Norton as an alumnus?
Williams College
9. Which of the following is not considered a trade or business under common control under IRC § 52 and its regulations (incorporated into the research credit computational structure under IRC § 41(f))?
a "QRE-generating group under common control"
10. In which case did the Tax Court hold that a taxpayer's internal use software development project satisfied both the 4-part definition of qualified research and the 3-part high threshold of innovation test?
Norwest Corp. v. Commissioner

Answers to Monday's Quiz

(Session 1: Questions 11-15)

11. In the preamble to the final regulations concerning the definition of qualified research (Treas. Reg. § 1.41-4), the Treasury Department and the IRS stated that 3 specific exclusions “do not cover research activities that otherwise satisfy the requirements for qualified research.” Which of the following was not one of the 3 exclusions referenced by the Treasury Department and the IRS?
Funded research
12. Before SpaceX and Tesla, Elon Musk co-founded which of the following companies (later acquired by Compaq for \$307M) with his brother?
Zip2
13. The regulations prescribe that a taxpayer must employ “a scientific method for discovering information” in order to satisfy the process of experimentation test of IRC § 41(d)(1)(C)?
False
14. The shrinking-back rule of Treas. Reg. § 1.41-4(b) is not itself applied as a reason to exclude research activities from research credit eligibility?
True
15. The four-part definition of qualified research under section 41(d)(1) shall be applied separately with respect to:
Each business component of the taxpayer

And Monday's Session 1 raffle winners are...




**KEEP
CALM
IT'S
RAFFLE
TIME!**



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Wednesday's Program – November 10, 2021

12:00 pm – 12:10 pm	Welcome Remarks Morgan Lewis: Alex Sadler and Doug Norton
12:10 pm – 1:10 pm	Substantial Rights, Trade or Business Requirement, Control Groups, and Other Thorny Technical Issues Ivins, Phillips & Barker: Jeff Moeller Andersen: Caitlin Bradley
1:10 pm – 1:15 pm	BREAK
1:15 pm – 2:15 pm	In-House Perspectives on Methodology, Documentation, and Audits MASSIE R&D Tax Credits: Jason Massie and Peter Green Dow: Michael Keller
2:15 pm – 2:20 pm	BREAK
2:20 pm – 3:20 pm	State and Local Incentives and Examinations Morgan Lewis: Cosimo Zavaglia Crowe: Sophia Shah Eide Bailly: Joe Stoddard
3:20 pm	Quiz

Join us for Faculty Q&A and Wrap/Closing Remarks on Friday, November 12



Alexa Claybon
EY



Kathleen King
Alvarez & Marsal
Taxand



Tom Linguanti
Morgan Lewis



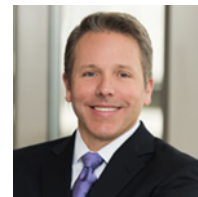
Shawn Marchant
Tanner



Doug Norton
Morgan Lewis



Adam Quattlebaum
DHG



Alex Sadler
Morgan Lewis

Please use the chat function to submit any questions throughout the week of programming.

We will address submitted questions in the Faculty Q&A panel at the end of the day on **Friday, November 12.**



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**SEVENTH ANNUAL
RESEARCH &
DEVELOPMENT TAX
CREDIT SYMPOSIUM**

**FUNDED RESEARCH: WHICH PARTY GETS THE CREDIT? AND OTHER
THORNY TECHNICAL ISSUES**

Presenters: Jeff Moeller (Ivins, Phillips & Barker) and Caitlin Bradley (Andersen)

Wednesday, November 10, 2021

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Presenters



Caitlin Bradley

Director, Andersen
New York, NY



Jeff Moeller

Partner, Ivins, Phillips & Barker
Washington, DC

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Today's Topics:

Defining Funded Research: Which Party Gets the Credit?
Thorny Issues related to:

Custom Development and Substantial Rights
Joint Ventures and Collaboration Agreements

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Polling Question 1:

I am currently dealing, or have dealt with, complex contractual arrangements that have created rights and risks issues for me or my clients?

- A. Yes
- B. No
- C. What are Rights and Risks Issues?
- D. Not applicable

Funded Research: Which Party Gets the Credit?

Funded Research is generally excluded from the definition of Qualified Research Activities.

Research funded by a contract can qualify for the research credit if the following requirements under section 1.41-4A(d) are met:

- Amounts payable under the contract are “contingent on the success of the research”
 - Taxpayer bears costs/financial risk of failure.
- Taxpayer retains “substantial rights” in the research.
 - Rights to use the results.

Risk: Fixed-price contracts generally qualify; cost-plus and other “time and materials” contracts generally do not

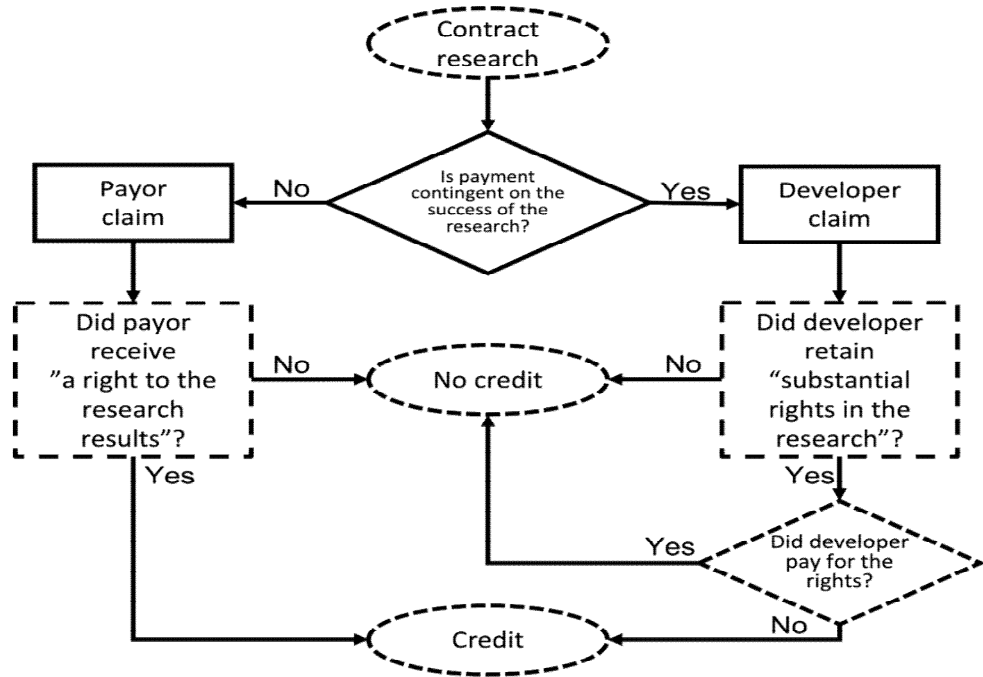
- Don’t stop at the pricing terms: look to the warranty, inspection and guarantee terms

Rights: Allocation of IP to customer not necessarily fatal

- Right to pursue the contract in issue
- Know how gained from experience

Funded Research: Which Party Gets the Credit?

Payor vs. Developer:
Who has the rights to the QREs?



Custom Developers and “Substantial Rights”

- *Tangel v. Commissioner*, T.C. Memo 2021-1 (Jan 11, 2021) (J. Lauber)
 - Custom machinery developer denied credit for lack of “substantial rights”
 - Standard contract terms for custom developer/manufacturer
 - Reserved IP rights from the project to customer
 - “Funded” definition in Regs section 1.41-4A(d)
 - Contingent upon success—*Fairchild*
 - Retention of substantial rights—*Lockheed*
 - Issues not addressed:
 - Was development and sale of the custom machine itself substantial rights?
 - IS THE REGULATION VALID?
 - Jeffrey Moeller, *Giving Developers the Research Credit They Deserve*, Tax Notes Federal (May 17, 2021)
 - **To Do: Check your contracts!**

Polling Question 2:

I have been involved in an IRS exam related to whether a custom developer has substantial rights to the research developed.

- A. Yes
- B. No
- C. Not yet but I expect it any day now
- D. Not applicable

The Complexities of Collaboration Agreements And Joint Ventures



Diversity of Terms

- Terms create complexities as to who may claim the QRE/Credit.
- May create opportunity!! (Is the service really a supply?)

Lack of IRS guidance

- De-Coordinated CIP from 2007

Formation of complex business combinations

- Joint Ventures and Partnerships

When Dealing with Collaboration Agreement: What Payments are Considered Funded?

- IRS position on payment types
 - Coordinated Issue Paper from 2007 addressed non-refundable up-front, milestone payments, and royalty payments
 - *Non-refundable Upfront payments* –
 - purchase of an intangible; not 174 eligible; not funded.
 - *Milestone payments* –
 - development milestones dependent on results may be QRE if substantial rights exist
 - *Royalty payments* –
 - Payments made after development; not 174 eligible; not funded.
 - IRS De-coordinated the paper in 2014 – since then no additional guidance

Polling Question 3:

In my practical experience, the tax department provides input into the drafting of contractual agreements between parties:

- A. Always
- B. Sometimes
- C. Never
- D. Not applicable

Complexity of cost sharing in collaboration agreements

Complexity of cost sharing

- No guidance exists on how to treat cost sharing when measuring as QRE.
- Lack of guidance and contract terms create complexities:

EX: Pharma A and Pharma B enter into a collaboration agreement. Both has substantial rights to any Joint IP developed. Each party is responsible for 50% of all development costs. Amounts are trued up quarterly. FTE rate: \$375,000. Q1 Pharma A spends \$500,000, Pharma B spends \$650,000; total \$1.150M. Pharma A reimburses Pharma B \$75,000.

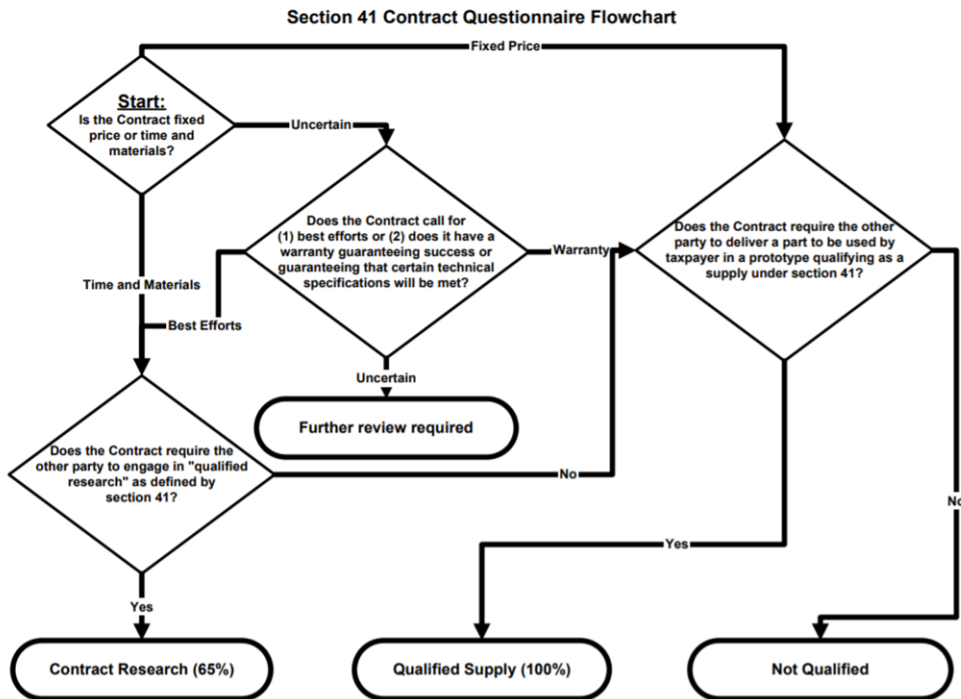
Requires Modeling and Analysis

- Convert FTE to Box 1 W-2 wage.
- Should Pharma B exclude \$75,000 reimbursed amounts as funded research?
- Should Pharma A include \$75,000 as contract research QRE?

When the Contract Terms Create Opportunity: Is it CR or Supply?

- Don't automatically assume all "research contracts" are 65% contract research
 - Contracts to provide supplies and prototypes are 100% qualified supplies
 - Even if not performed at the risk of taxpayer
 - For life sciences companies, includes clinical and experimental supplies
 - Prototype equipment for specialized use (special test equipment)
 - Software development embedded in test equipment
 - Cell cultures, bacterial and other DNA libraries
 - License payments for use of research databases may qualify under §41(b)(2)(iii)
 - Don't forget assets or rights acquired in:
 - Asset acquisitions
 - Collaboration agreements

When the Contract Terms Create Opportunity: Is it CR or Supply?



Joint Ventures and Collaboration Agreements

Partnership Trade or Business Issues

- “[I]n connection with” (§ 174) vs “carrying on” (§ 41) a trade or business (T or B)
exception for start-ups - **only** for in-house expenses (not CR) if at the time expenses are paid or incurred the taxpayer’s principal purpose is to use the results of the research in the active conduct of a future T or B of the taxpayer or of one or more persons within the taxpayer’s controlled group.
- General partnership rule: T or B determined at the partnership level without regard to the existing T or B of any corporate or individual partners. §1.41-2(a)(4)(i)
 - If start-up partnership is not part of the control group of a partner with an active trade or business, it will qualify for the credit itself only:
 - (1) If it intends to pursue a future trade or business
 - Problem: Intent to distribute IP to one or more of its partners
 - Problem: Is licensing or pro-rata distribution of IP on a regular basis a trade or business?
 - And
 - (2) To the extent it has in-house (not contract) expenses
 - Problem: Is research performed by a partner done qua partner or under contract (e.g., using FTEs)?

Polling Question 4:

Most collaboration agreements I review include contractual language that creates the formation of a partnership.

- A. Yes
- B. No
- C. Not Yet
- D. Not applicable

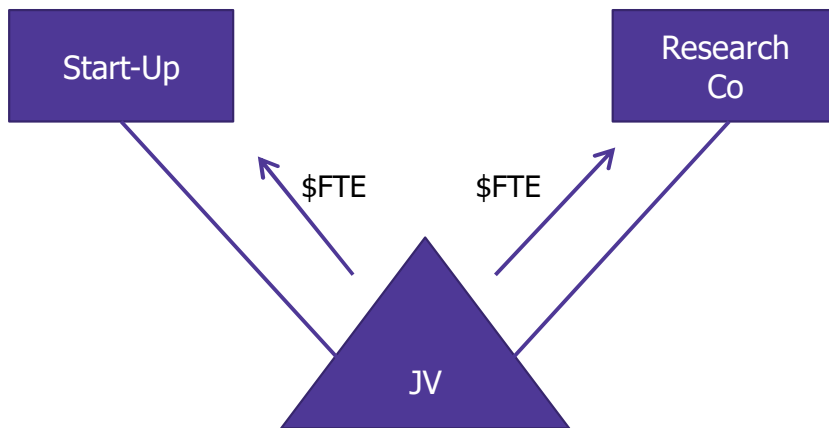
Joint Ventures and Collaboration Agreements

How to Lose a Partnership's Entire Research Credit?

JV Interest:
100% Gain till Cap Accts Equal
50-50 Thereafter

JV Interest:
100% Loss till Cap Accts Equal
50-50 Thereafter

- 100% of credit disqualified?
 - Research Co not entitled to use IP?
 - Research Co not at risk for its own activities
 - Research Co has temporary 100% allocation of losses
- Even if Research Co entitled to use IP, status of Start-up's portion of QREs
 - Start-up would not be entitled to claim JV FTEs to Research Co (contract research)? (50% reduction?)
 - Start-up not at risk for its own activities because of FTE arrangement with partnership (circular)? (further 50% reduction?)



- JV will distribute resulting IP to Start-Up
- Research Co will distribute resulting product

Joint Ventures and Collaboration Agreements

Collaboration Agreements

- Is it a partnership?
 - Profit or loss sharing, joint control, and other intent factors
 - All the partnership problems arise, but without a clear partnership agreement
 - Share of expenses
 - Contract research vs in-house
- Who (if anyone) gets the credit?
 - Milestone payments
 - Economic allocation to existing IP vs future risk funding vs successful future IP
 - Seize the early draft!
 - Inform IP/licensing department
 - Agreement language indicating what payment is for
 - Separating milestone payments for existing IP, future risk funding, and successful future IP
 - Risk and substantial rights

Key Takeaways

1

The Contract Terms Determine Which Party Gets The Credit

2

Contract Terms Create Complexities And Sometimes Opportunity!

3

The Creation of Collaboration Agreements and Joint Ventures Create Additional Complexities for Tax!

4

Tax Should Provide Input into Contract Drafting Early and Often!

Biography



Caitlin Bradley

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Caitlin is a director in Andersen's national tax practice with a specific focus on federal and state R&D tax credit services. She has more than 10 years of experience providing R&D tax credit services to companies of various sizes. Prior to Andersen, she spent over a decade at Ernst & Young working within the quantitative services practice where she focused on substantiating and computing R&D tax credits and various other federal tax planning work. She also has experience defending R&D credit claims under IRS and state examination.

Her experience spans industries that include defense contracting, pharmaceutical, biomedical device, internal and external use software, architecture and engineering, manufacturing, retail, food and beverage, and automotive. Caitlin has a JD from Albany Law School and a BS in accounting from Villanova University.

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Biography



Jeffrey E. Moeller

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Jeffrey E. Moeller is a partner of Ivins, Phillips & Barker in Washington, DC (www.ipbtax.com), one of the few law firms in the country specializing exclusively in the practice of federal tax law. Jeff has extensive experience handling planning, audit, and controversy matters involving the research tax credit and has conducted frequent seminars in this area. Jeff's experience with the credit goes all the way back to the influential brief he authored for the Aerospace Industries Association of America, as Amicus Curiae in the seminal 1996 case, *Fairchild Industries v. US*. Currently, Jeff is lead counsel for the taxpayer in *Bayer Corp. v. United States*, the largest research tax credit ever docketed.

Jeff also specializes in corporate tax planning and transactional matters and has structured and negotiated mergers, acquisitions, joint ventures, and other transactions valued in excess of one-hundred billion dollars. He specializes particularly in collaboration agreements, joint ventures and other domestic and cross-boarder arrangements involving research activities. Jeff received his law degree from the Georgetown University Law Center.

THANK YOU

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5 MINUTE BREAK...WE WILL RESUME SHORTLY



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**SEVENTH ANNUAL
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CREDIT SYMPOSIUM**

**IN-HOUSE PERSPECTIVES ON METHODOLOGY,
DOCUMENTATION, AND AUDITS**

Presenters: Jason Massie (Massie R&D Tax Credits), Peter Green (Massie R&D Tax Credits), and Michael Keller (Dow)

Wednesday, November 10, 2021

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Presenters



Jason Massie
Founder and President
MASSIE R&D Tax Credits
Alpharetta, GA



Peter Green
CEO
MASSIE R&D Tax Credits
Alpharetta, GA



Michael Keller
Tax Analyst
DOW
Midland, MI

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The background of the slide is a dark blue gradient. It features a complex, organic pattern of thin, branching orange lines that resemble a neural network or a root system. Scattered throughout this pattern are numerous semi-transparent circles in shades of blue, green, and yellow, some of which are larger and more prominent than others, creating a bokeh-like effect.

In-House Perspectives on Methodology, Documentation, and Audits

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Polling Question #1

How many years have you been involved in the R&D tax credit?

- A. Less than 1 year
- B. 1-10 years
- C. 11-20 years
- D. Over 20 years

CHALLENGE

To claim and sustain the
LARGEST R&D tax credit possible
with the
LEAST amount of work.

MASSIE R&D TAX CREDIT BEST PRACTICE ROUNDTABLE & NEWSLETTER

ROUNDTABLE:

Quarterly | Complimentary | 1 CPE Credit | 250+ Attendees

NEWSLETTER:

2 Newsletters Per Quarter | R&D Hot Topics

SCAN ME WITH YOUR PHONE CAMERA:



massietaxcredits.com/roundtable

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SESSION DISCUSSION MAP

1. Overall Approach for the Study and Skills Required to Manage the Process
2. Pre-Project Planning and Design, Key Stakeholders and Kick-Off
3. SME Interaction in Developing QREs and Documentation
4. Tax Year Workpapers and Project Wrap-Up, Lesson's Learned
5. Controversy

Polling Question #2

How long does your R&D study typically last?

- A. I am a provider
- B. 1-3 Months
- C. 4-6 Months
- D. 7-12 Months

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Polling Question #3

If we asked your SMEs what they would like to change about your current process, what would they say?

- A. I am a provider
- B. Ask me in the current year about current year activities
- C. I don't like the interview process, isn't there another way
- D. Our process is great, don't change a thing

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Polling Question #4

We are currently under audit in:

- A. I am a provider, or I am not under audit
- B. Federal and states
- C. Federal only
- D. States only

Biography



Jason Massie

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Jason is Founder and President of MASSIE R&D Tax Credits, where he is responsible for the quality, consistency and integrity of the firm's tax credit service offerings. He heads the Delivery Team at MASSIE and leads all Architecture and Controversy Phases for clients across the United States. He was first introduced to R&D tax credits during his time at a Big 6 accounting firm in Washington, DC. Over the next few years, he led Big 4 and law firm practices in managing many types of federal and state tax planning, credits, incentives and other cash flow strategies. He is widely recognized as an expert by his peers in the R&D Tax Credit and R&D Expenditure areas, with frequent speaking and writing engagements.

In Jason's free time, he transforms from a Founder and President to an endurance enthusiast. He has competed in over 40 marathons and ten Ironman Triathlons. His favorite races include the Honolulu, Boston, Chicago and NYC Marathons and Ironman Wisconsin and Chattanooga.

He received a BS in Accounting from Christian Brothers University and a JD from the University of Memphis.

Biography



Peter Green

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Peter is CEO of MASSIE R&D Tax Credits. Responsible for the company's vision, growth objectives, and client experience initiatives, Peter brings impressive experience to MASSIE. His career in the tax credit industry began in 2001. In 2007, he became President of WALLACE. Implementation of his own improvement initiatives and ideas grew the company at a rapid rate over several years until it was noticed and acquired by ADP in 2011. Peter's expertise and detailed understanding of the tax credit industry is acknowledged by his service as a former member of specialty taxation committees for both the Georgia Chamber of Commerce and the Georgia Economic Development Association. He is also a frequent speaker on tax credit policy and best practices nationwide.

Biography



Michael Keller

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Michael is a Tax Analyst at Dow. The Dow Chemical Company is an American multinational chemical corporation headquartered in Midland, Michigan. The company is among the three largest chemical producers in the world. Dow is a materials science leader committed to delivering innovative and sustainable solutions for customers in packaging, infrastructure and consumer care.

Michael is in Dow's domestic tax operations group. He serves as the lead on the R&D tax credit at Dow.

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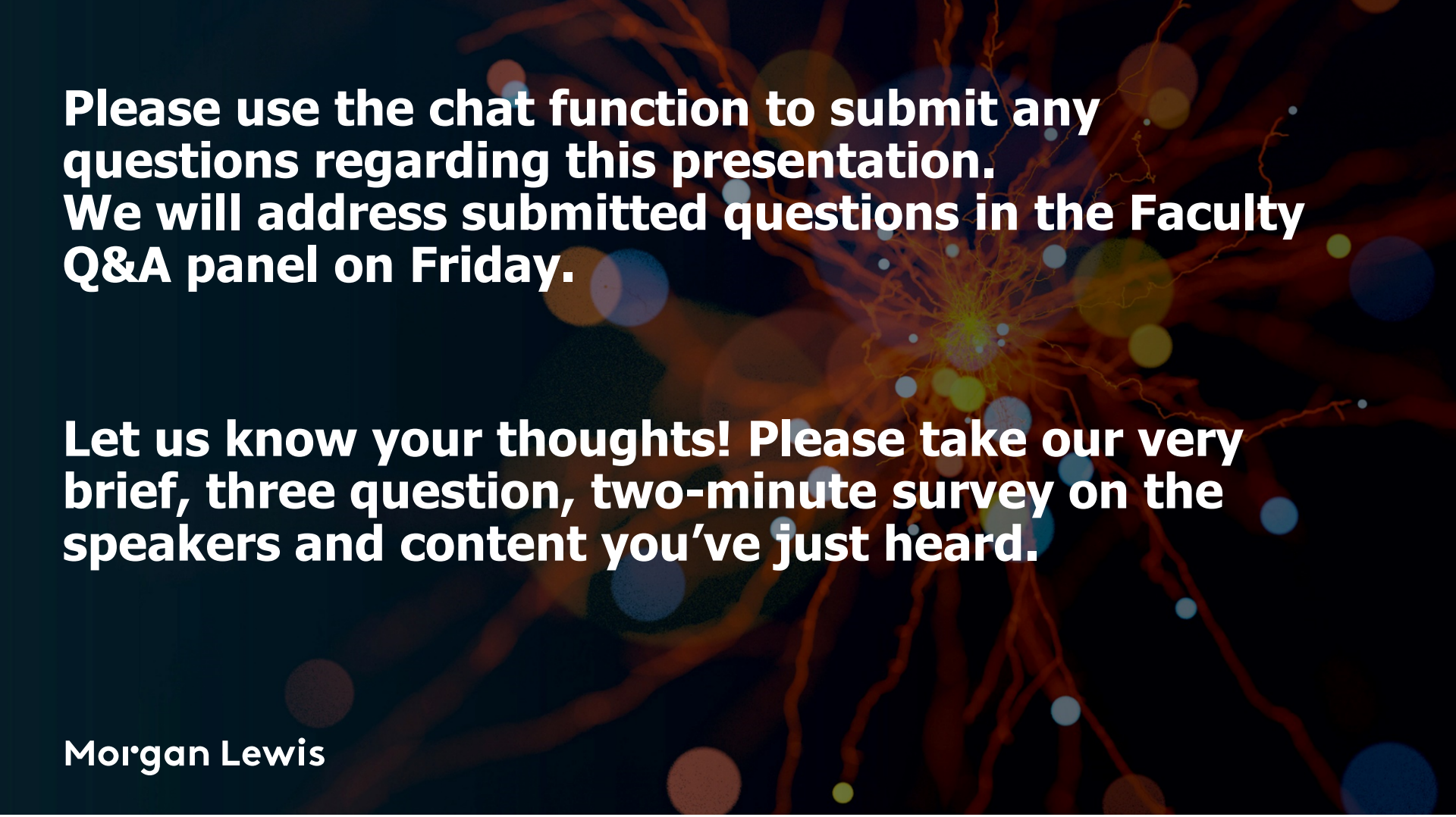


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STATE AND LOCAL INCENTIVES AND EXAMINATIONS

Presenters: Cosimo Zavaglia (Morgan Lewis), Sophia Shah (Crowe), and Joe Stoddard (Eide Bailly)

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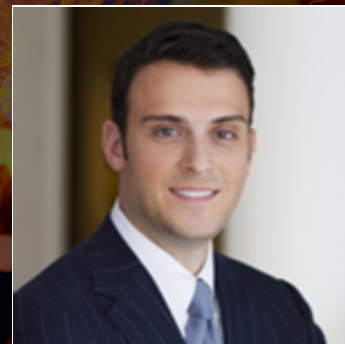
Presenters



Joe Stoddard
Partner, Eide Bailly
Salt Lake City, UT



Sophia Shah
Sr. Manager, Crowe
New York, NY



Cosimo Zavaglia
Partner, Morgan Lewis
New York, NY

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State and Local Incentives and Examinations

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Polling Question 1

What causes the most concern in preparing and/or defending your state's R&D credit?

- A. Lack of documentation
- B. Return on investment (level of effort vs. credit amount)
- C. Business interruption (subject matter expert participation, IDR response time)
- D. I have never prepared or defended a state R&D credit

State Credit Considerations & Updates

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Purpose of State R&D Credits



Attract new or retain business and jobs



Competition among states

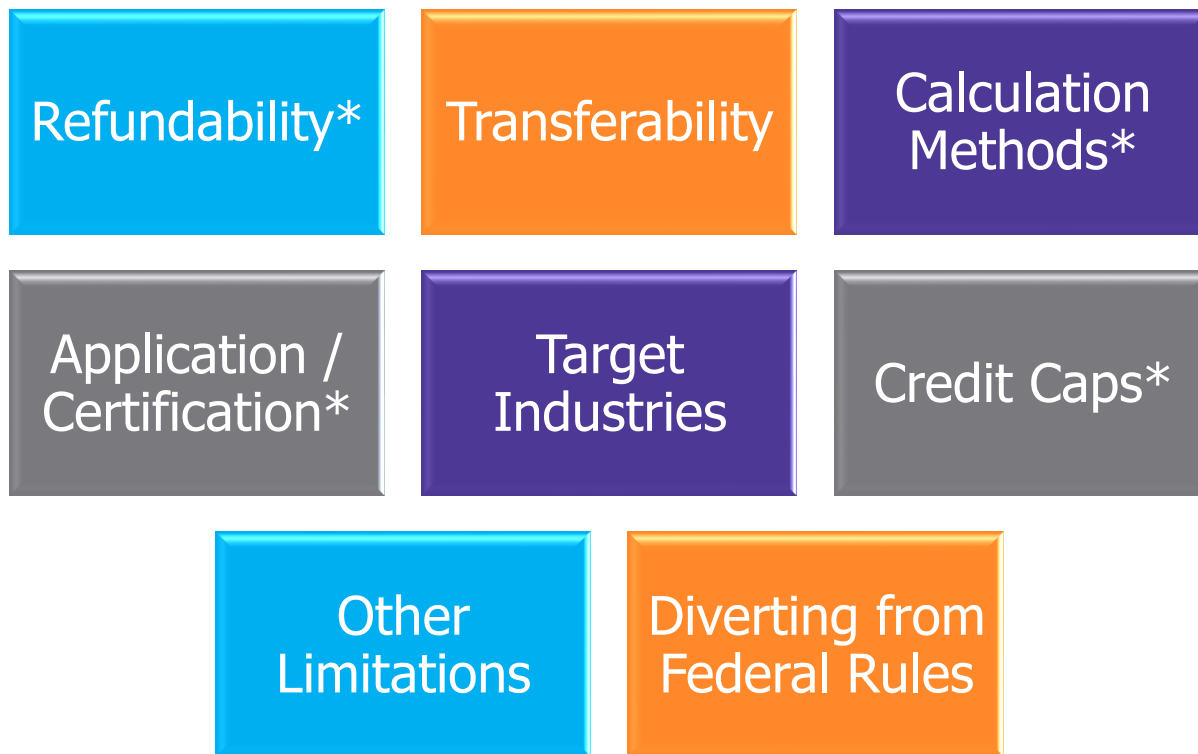
- Differentiating factor can be tax credits and non-tax financial incentives



Common state credits

- Enterprise zone tax credits
- Investment tax credits
- Job creation credits
- Environmental tax credits
- Research & development tax credits

Think beyond the rate: Several factors



State Credit Considerations

Think beyond the rate: Several factors

Refundability

- Arizona – Small businesses
- Connecticut – Can apply to Commissioner to exchange credit for refund = 65% of credit
- Delaware – Starting in 2017
- Hawaii
- Iowa
- Louisiana – prior to 7/1/15
- Minnesota – prior to 1/1/13
- Nebraska – Refundable income tax credit or may be used to obtain refund of sales & use tax
- Virginia – QREs under \$5M
- Maryland – refundable for small businesses

Calculation Methods

- States generally utilize IRC § 41 definition of QREs with requirement that qualified research activities occurred within the state
- Calculation Methods
 - Mirroring federal regular vs. ASC
 - ASC-like but no 50% reduction to base period
 - ASC-like but varying base years
 - % of taxable year QREs
 - % of federal credit based on state QREs over total QREs
 - State specific credit formula

State Credit Considerations

Think beyond the rate: Several factors

Application / Certification

- Delaware – 9/15
- Colorado – Requires pre-certification
- Florida – 3/20-3/26 filing
- Hawaii –
 - Application period for 2020 ended on 3/31/21.
- Louisiana
 - Within one year after 12/31 of the year in which QRE was incurred
- Maryland – 11/15
- New Hampshire – 6/30
- New Mexico
- Pennsylvania – 12/1/21*
- Virginia – 9/1*

Credit Cap

- Arizona – 2021 cap of \$5M has been fully allocated
- Delaware – \$5M cap removed
- Florida – \$9M for 2021
- Maryland – \$250K for a single applicant
- New Hampshire – \$7M
- Pennsylvania – \$55M
 - \$11M set aside for small business
- Virginia – \$7.7M (refundable credit); \$24M (nonrefundable/major credit)*

Recent Developments and Updates

- Maryland – 2021 Changes
 - Eliminated “basic” (flat) credit and increased funding for the “growth” (incremental) credit
 - Total \$12M credit cap—\$3.5M allocated to small businesses
- Hawaii – 2020 changes
 - \$5M cap added; first come, first served basis
 - Changed calculation methodology—no base amount

Recent Developments and Updates

- Texas – 2021 Regulations
 - Internal use software specifically excluded
 - Reg. section 1.174-2 (pilot models / prototypes) not applicable for Texas purposes
 - Supplies – cannot claim manufacturing or resale sales tax exemption for supplies claimed as QREs
 - Rules will be applied retroactively
- Arizona – 2022 changes
 - Credit rates drop 24% to 20% (first \$2.5M QREs) and 15% to 11% (excess QREs)
 - Carryforward of unused credits reduced 15 years to 10 years

State Exams

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Polling Question 2

How is the state R&D exam process going for you?

- A. Seeing fewer exams compared to the past
- B. Consistent year-over-year; no noticeable changes
- C. Seeing a significant uptick

State R&D Exam Trends



A few states
have established
procedures and
deep experience
in R&D credit
audits



Many states
piggyback off
IRS audits

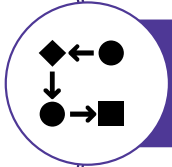


Certain states
are becoming
increasingly
sophisticated /
aggressive on
audits

What is being challenged?



Industries



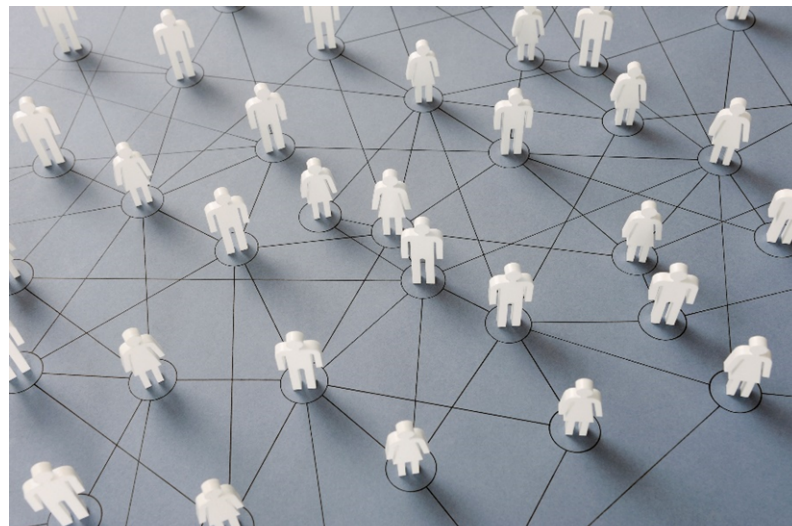
Methodologies



Four-Part Test

Employee / Wage QREs

- Business component nexus
- Job titles
- Activity levels
- Physical presence



Supply QREs

- Pilot models / prototypes
- Business component nexus
- Documentation



Rental or Lease of Computers QREs

- Jurisdiction requirement
- Sales tax to vendors



Contract Research QREs

- Physical presence
- Funding
- Documentation



Polling Question 3

What is your main state exam pain point?

- A. Documentation
- B. Employees/wages
- C. Supply claims
- D. Contract research nexus

Polling Question 4

Due to the success/failure of a state exam, have you changed your approach?

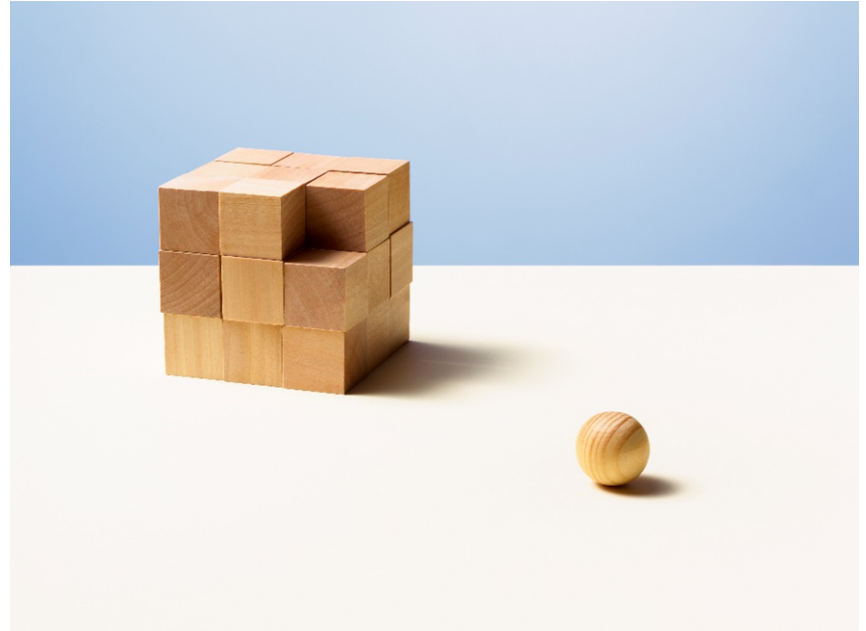
- A. Yes, with types of expenses we qualify
- B. Yes, with documentation
- C. Both above
- D. No

Other State and Local Opportunities & Issues

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Other State and Local Opportunities & Issues

- Job Credits
- Sales & Use Tax Offsets
- Social Infrastructure Bill
- Remote Work



Biography



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Joe is a partner in Eide Bailly's National Tax Office and leads the firm's R&D Tax Incentives practice. Joe has over 20 years of tax consulting experience providing services to a variety of industries, including manufacturing, agriculture, technology, construction, life sciences and government contractors. He helps clients benefit from R&D tax incentives (including federal and state credits) and regularly works with the IRS and state taxing authorities to support R&D tax incentives claims. He has also written numerous articles on R&D tax incentives issues and frequently presents at conferences and seminars.

Biography



Sophia is a senior manager in Crowe LLP's Federal Tax Consulting Services group in New York City. She has 8+ years of experience in public accounting, focusing primarily on middle-to-large market R&D tax credit claims within the life sciences, software, and manufacturing/distribution industries. Her experience includes developing, tailoring, and managing specialized work plans, as well as identifying industry-specific opportunities and defending federal and state research credit claims.

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Cosimo is a partner in Morgan Lewis's tax practice. He advises corporations, partnerships, and individuals on state and local tax controversy, planning, and transactional matters. Cosimo routinely represents clients in high-stakes state and local tax audits, appeals, and litigations in matters throughout the United States, including defending clients in state False Claims Act cases and sales and use tax, individual residency, withholding tax, corporate income tax, and real estate transfer tax audits and disputes. He also advises clients on developing state and local tax planning strategies for corporate acquisitions, dispositions, restructurings, and mergers.

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The background of the slide is a dark blue gradient. It is decorated with a complex network of thin, branching orange lines that resemble a neural network or a molecular structure. Scattered throughout the background are numerous semi-transparent circles in shades of blue, orange, and yellow, creating a bokeh effect.

Please use the chat function to submit any questions regarding this presentation. We will address submitted questions in the Faculty Q&A panel on Friday.

Let us know your thoughts! Please take our very brief survey on the speakers and content you've just heard.

Please also let us your thoughts for next year's symposium! Would you prefer live, virtual, or hybrid?

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QUIZ DAY 2

Quiz Question 1

Who is the author of Legal Guide to the Research Credit?

- A. Axel DeLars
- B. Alex Sadler
- C. Lexa Sardel
- D. Tom Linguanti

Quiz Question 2

The numerator of a fraction is

- A. The number on the top
- B. The number on the bottom
- C. The line in the middle
- D. The resulting ratio

Quiz Question 3

What percentage of a taxpayer's research activities can fail to constitute elements of a process of experimentation before the activities fail the four-part test?

- A. <80%
- B. <20%
- C. 0%
- D. 80%

Quiz Question 4

Which of the following is NOT an example in the regulations of excluded “social science” research?

- A. Economics
- B. Business management
- C. Behavioral sciences
- D. Finance

Quiz Question 5

How many gold Olympic medals has Michael Phelps won?

- A. 10
- B. 18
- C. 20
- D. 23

Quiz Question 6

Under the statute and regulations, a taxpayer claiming a credit under section 41 must maintain records

- A. By project or business component
- B. By business component, employee and type of information
- C. Sufficient to prove entitlement to the credit beyond a reasonable doubt
- D. In sufficiently usable form and detail to substantiate that the expenditures claimed are eligible
- E. Sufficient to establish a non-frivolous claim to the credit

Quiz Question 7

Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the business component, or the appropriate _____ of the business component.

- A. Design
- B. Format
- C. Structure
- D. Appearance
- E. Use

Quiz Question 8

For purposes of section 41(d) and this section, information is technological in nature if the process of experimentation used to discover such information _____ relies on principles of the physical or biological sciences, engineering, or computer science.

- A. Fundamentally
- B. Essentially
- C. Typically
- D. Blank

Quiz Question 9

From 1977-2011, this country's flag consisted of a single color with no design

- A. Algeria
- B. Bahrain
- C. Bangladesh
- D. Libya

Quiz Question 10

For purposes of the research credit, what regulation governs the definition of a parent-subsidary group under common control?

- A. Treas. Reg. § 1.174-3
- B. Treas. Reg. § 1.41-6
- C. Treas. Reg. § 1.41-7
- D. Treas. Reg. § 1.52-1

Quiz Question 11

In *Snow v. Commissioner*, 416 U.S. 500 (1974), which addressed the trade or business requirement under section 174, the taxpayer was a partner in a partnership which invested in the development of a special purpose incinerator. What was the name of the partnership?

- A. Clean Disposal Inc.
- B. Echo
- C. Burns Investment Company
- D. Courier

Quiz Question 12

What rule governs a motion to dismiss for failure to state a claim, like those filed by the government in *Intermountain Electronics* and *PremierTech*?

- A. Federal Rule of Evidence 408
- B. Federal Rule of Civil Procedure 12(b)(6)
- C. Federal Rule of Civil Procedure 12(b)(1)
- D. Section 41(h)

Quiz Question 13

Which of these US Supreme Court Justices was NOT born in New York?

- A. Samuel Alito
- B. Elena Kagan
- C. John Roberts
- D. Sonia Sotomayor

Quiz Question 14

What is the most recent tax case to cite *Mayrath* for the principle that section 174 applies to the cost of developing the concept of a product but not the cost of building it?

- A. Union Carbide
- B. Little Sandy Coal
- C. Trinity v. Commissioner
- D. Leon Max

Quiz Question 15

Now that the IRS Appeals pilot program has ended, in large cases Appeals

- A. Must invite Exam to the taxpayer's presentation
- B. Cannot invite Exam to any portion of the taxpayer's presentation
- C. Can invite Exam to participate in the taxpayer's presentation only with the taxpayer's consent
- D. Can invite Exam to participate in the taxpayer's presentation at the discretion of Appeals

THANK YOU FOR JOINING TODAY'S SESSION!

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