



R&D Tax Credits: Opportunities for 2021 and beyond... and prior

Presented on December 15th, 2021



Today's Presenters



JON TUCKER

Principal – R&D Tax Credits

ABOUT KBKG



Established in 1999 with offices in major markets throughout the US, KBKG is one of the oldest and largest independent providers of specialty tax studies in the country. By focusing exclusively on value-added tax services, we complement your traditional tax and accounting team.

SINGLE SOURCE SOLUTION

We are unique in the marketplace as we offer a single source solution for a number of specialty tax services. We provide you with a single point of contact who will interject the appropriate subject matter expert within our team as necessary. We help determine which tax programs benefit clients and stay committed to handling each relationship with care and diligence.

SEAMLESS TEAMWORK & COLLABORATION

Our ability to work seamlessly with your team is the reason so many tax professionals and businesses across the nation trust KBKG.

Our practice is staffed by full-time specialists with engineering, valuation, "green" building, estimating, and construction backgrounds as well as tax professionals, attorneys, and CPAs.

SERVICES

- R&D Tax Credits
- Cost Segregation for Buildings and Improvements
- Green Building Tax Incentives
- Transfer Pricing Services
- IC-DISC
- Fixed Asset Review
- Repair vs. Capitalization Review
- Employment Tax Credits

CLIENT-CENTRIC FIRM SINCE 1999

NATIONWIDE SERVICES

Offices and representatives located across the US



PIONEERS

One of the first independent engineering tax firms in the country



THOUSANDS OF TAX PROJECTS PERFORMED

Resulting in hundreds of millions of dollars in benefits for our clients



THOUGHT LEADERS

Nationally-recognized public speakers and authors



DIVERSE TEAM

Tax specialists, attorneys, energy consultants and engineers from various disciplines



PREFERRED PROVIDER

For thousands of CPAs across the country



EDUCATORS

Over 25,000 hours of CPE issued

Learning Objectives

Benefits of the R&D Tax Credit

R&D Tax Credit Overview

What to Consider

Audit Considerations

Chief Counsel Memorandum





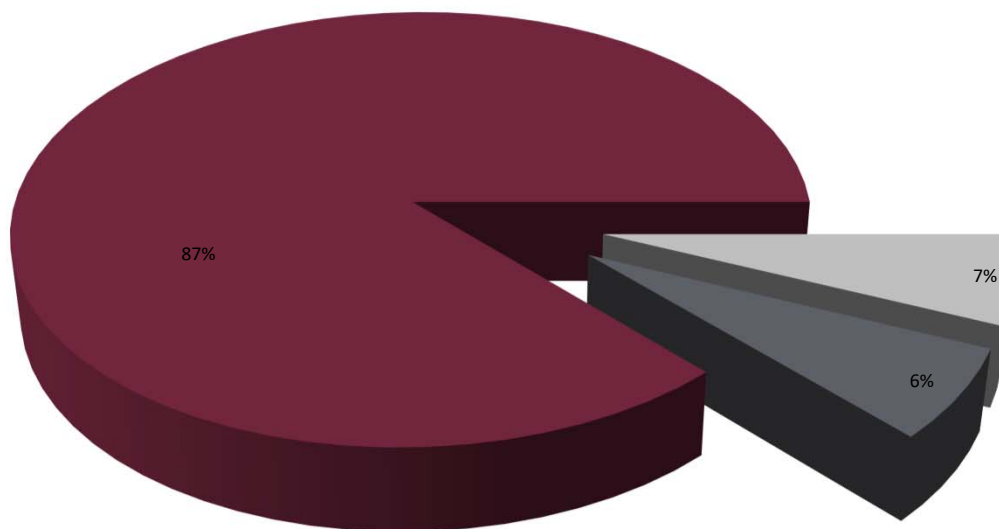
Benefits of the R&D Tax Credit

BENEFITS OF THE R&D TAX CREDIT

- Federal benefit typically ranges from 7% to 10% of the qualifying research expenditures
- Dollar-for-Dollar reduction in tax liability
- Increases the Return on Investment
- Lowers the effective tax rate
- Improves earnings per share
- Retroactive Claims (all open years or more if net operating losses)
- General Rule: 1 Year Carryback; 20 Year Carryforward
- S Corps & Partnerships – R&D tax credit flows through to the owners
- Many states offer an R&D tax credit



R&D CREDIT BENEFITS BY BUSINESS SIZE



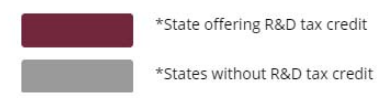
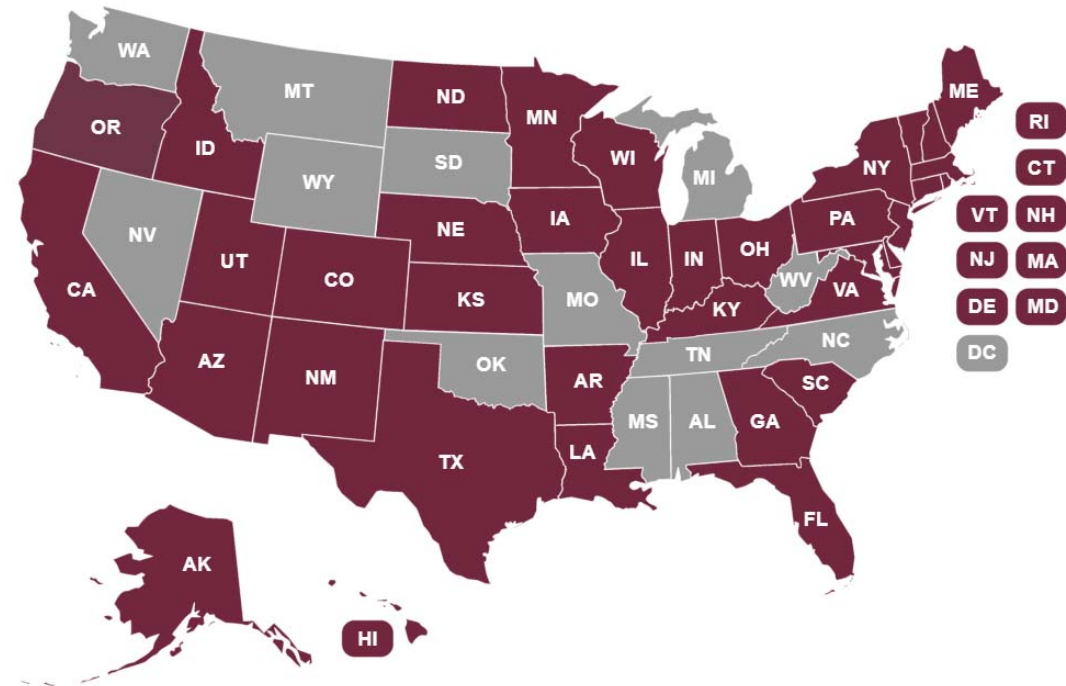
■ <\$10M in Revenue ■ <\$100M in Revenue ■ >\$100M in Revenue

FEDERAL R&D CREDITS BY INDUSTRY – APPROXIMATE ALLOCATION

Industry	Percentage
Manufacturing	61%
Information	16%
Professional, scientific, technical services	10%
Wholesale and retail trade	7%
Finance and insurance	2%
Holding Companies	1%
Mining	1%
Utilities	<1%
Other	1.5%
Total	

R&D CREDIT BENEFITS BY STATE

Alaska	Idaho	Michigan	Oregon
Arizona	Illinois	Minnesota	Pennsylvania
Arkansas	Indiana	Nebraska	Rhode Island
California	Iowa	New Hampshire	South Carolina
Colorado	Kansas	New Jersey	Texas
Connecticut	Kentucky	New Mexico	Utah
Delaware	Louisiana	New York	Vermont
Florida	Maine	North Dakota	Virginia
Georgia	Maryland	Ohio	Wisconsin
Hawaii	Massachusetts		



A top-down view of a meeting table with people, laptops, papers, and coffee cups. The scene is dimly lit, with a dark overlay. The table is made of dark wood. Several people are seated around the table, their hands and arms visible. They are looking at papers and laptops. There are several coffee cups on the table. The overall atmosphere is professional and collaborative.

R&D Tax Credit Overview

THE “FOUR-PART TEST”

01

1. Technological in Nature (§41)

The activity performed must fundamentally rely on principles of:

- Physical Science;
- Biological Science;
- Engineering; or
- Computer Science

02

2. Permitted Purpose (§41)

The activity must relate to a new/improved business component's:

- Function;
- Performance;
- Reliability; or
- Quality

03

3. Elimination of Uncertainty (§174)

The activity must be intended to discover information to eliminate uncertainty concerning the capability, method or design for developing or improving a product or process.

04

4. Process of Experimentation (§41)

The taxpayer must engage in an evaluative process designed to identify and evaluate more than one alternative to achieve a result.

For example: modeling, simulation or a systematic trial and error methodology.



OVERVIEW – QUALIFIED RESEARCH EXPENSES

Wages

- (1) W-2, Box 1; (2) Partnership Earnings subject to SE tax; & (3) Schedule C
- Excludes 401k & pre-tax benefits, and wages used calculating Work Opportunity Credit under §51

Supplies

- Tangible property used or consumed in qualified research activities (i.e., compounds, chemicals active and inactive ingredients, materials for prototypes, etc.), excludes:
 - (i) Land – acquisition & improvements; & (ii) Depreciable

Contract Research

- 65% of amounts paid to non-employees for qualified activities

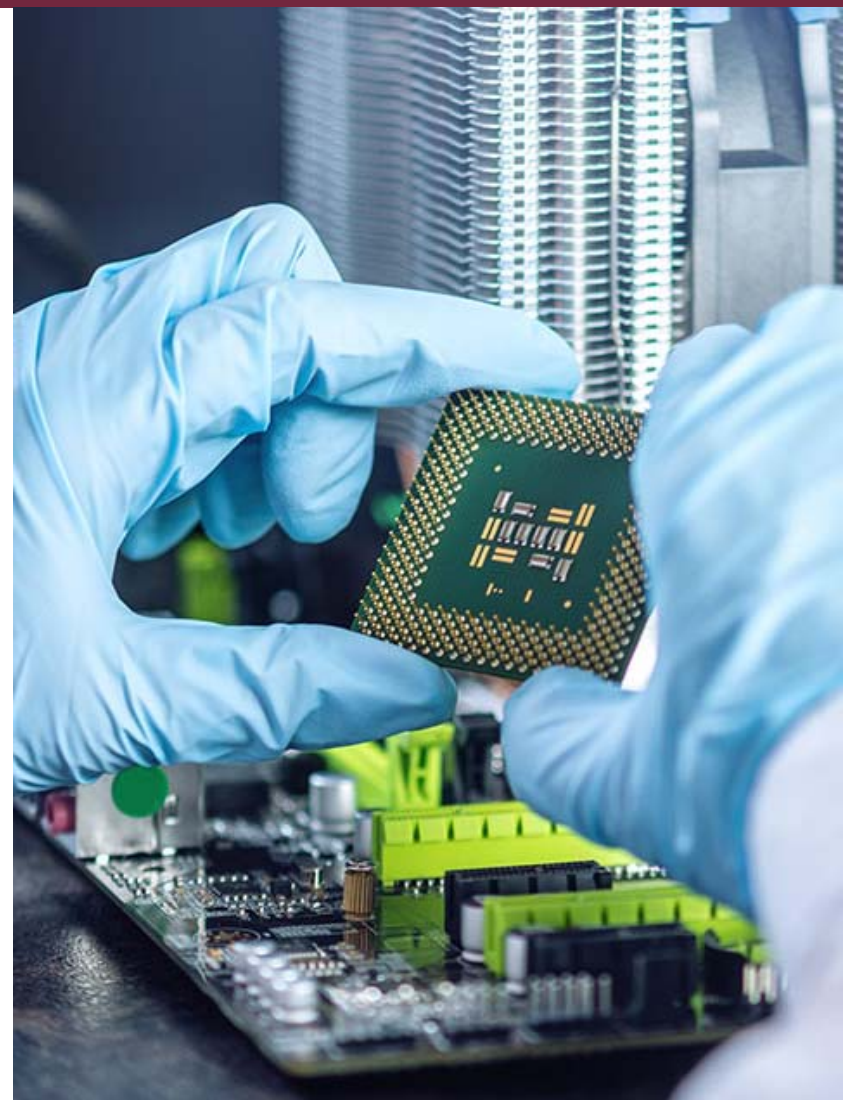
OVERVIEW – WHO QUALIFIES?

Any Employee who:

- Performs qualified activities
- Direct Supervision of other employees who perform qualified activities
- Direct Support of other employees who perform qualified activities
- Direct Supervision & Direct Support need not meet 4-Part Test

Outside Contract Service Providers:

- 65% of amounts paid or incurred for qualified research (paid to any person other than an employee of the taxpayer)



QUALIFIED ACTIVITIES

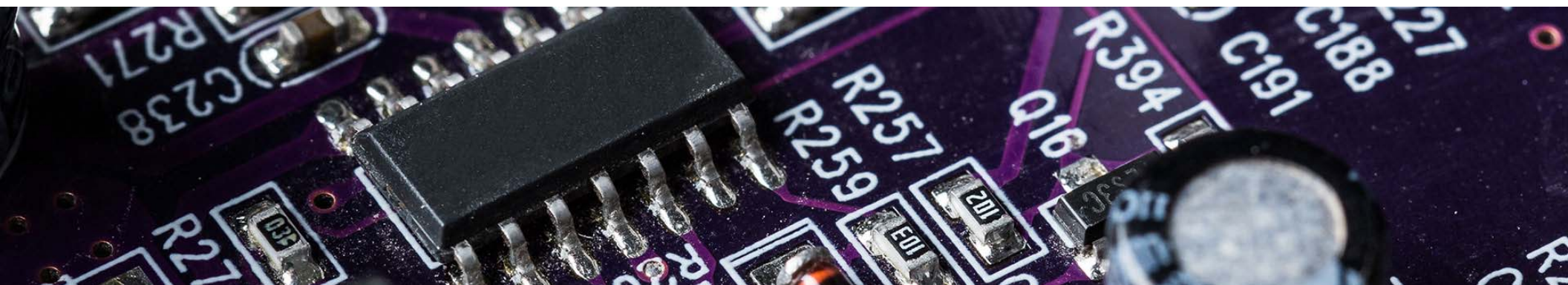
- Design - Technical design work, CAD design, modeling & analysis
- Prototype development – design and build
- Testing - Computer modeling & simulation, prototypes, field tests
- Activities from concept through release to commercial production
- Success is not required



OVERVIEW – QUALIFYING INDUSTRIES

- Aerospace
- Architectural
- Automotive
- Banking
- Chemical
- Defense
- Food & Beverage
- Engineering
- Manufacturing
- Medical Device
- Life Sciences
- Pharmaceuticals
- Retail
- Semiconductor
- Telecommunications
- Technology

Applies Across ALL Industries!!!



NON-QUALIFIED ACTIVITIES CONT.

The following are deemed to occur after commercial production:

- Preproduction planning for a finished business component
- Tooling-up for production
- Trial production runs
- Trouble shooting detecting faults in production equipment or processes
- Accumulating data relating to production processes
- Debugging flaws in a business component



A top-down view of a meeting around a wooden table. Several people are seated around the table, their hands and arms visible as they work with documents, laptops, and pens. The table is cluttered with various items including papers, a laptop, a telephone, and glasses. The overall scene is dimly lit, creating a professional and focused atmosphere.

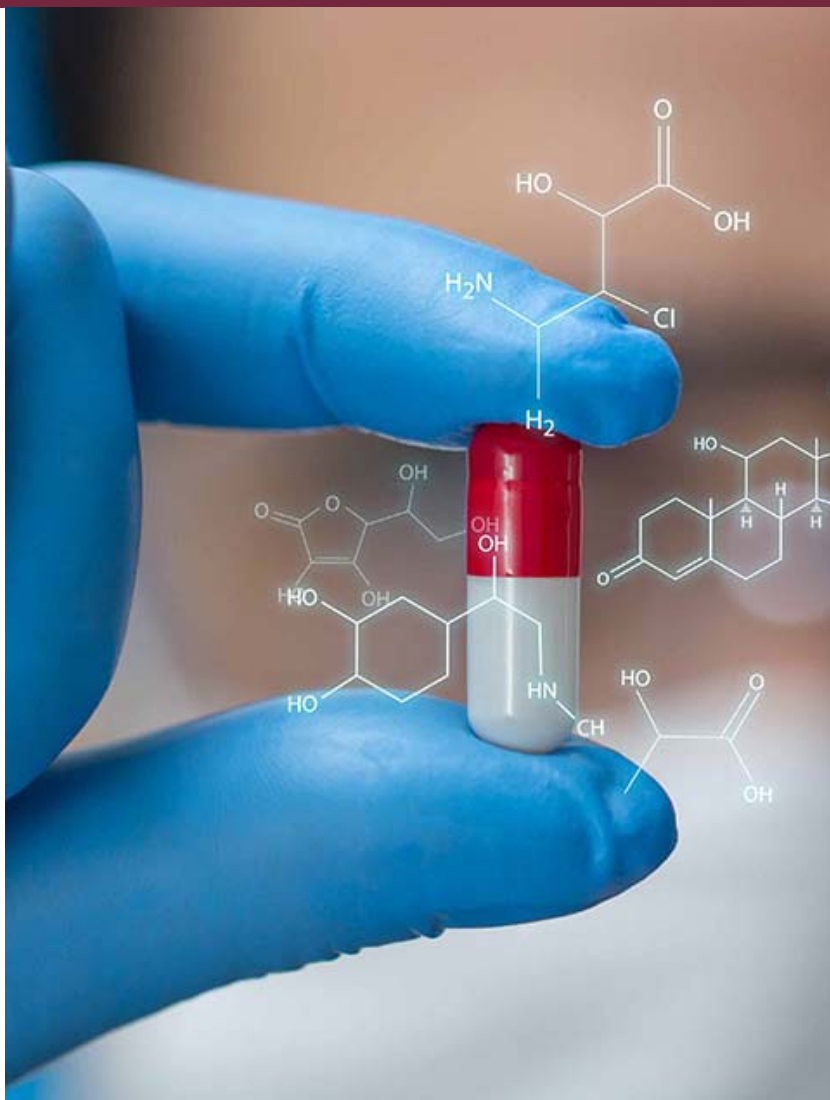
What to Consider

THE TAX CUTS & JOBS ACT

The Tax Cuts and Jobs Act (H.R. 1) includes provisions that may impact the R&D Tax Credit

- §280C Elections
- Alternative Minimum Tax

Effective for tax years beginning after December 31, 2017





§280C ELECTION

To avoid providing a double benefit on the same expense, §280C requires a taxpayer to either reduce their R&D deductions by the amount of the credit or elect to claim a reduced credit, calculated as follows:

- R&D tax credit multiplied by the top corporate tax rate (currently 21%)

The election must be made on a **timely filed** return, including extensions (protective elections are permissible).

Partners of a pass-through entity that are in the top individual rate may benefit greatly from making this election.

- The 16% spread (37% - 21%) will increase the benefit received by each partner making the 280C election.

Effective for tax years **beginning after** December 31, 2017

AMT

AMT Limitation

- Currently, the R&D tax credit cannot be utilized to offset AMT (*except in the case of a Qualified Small Business*)

Tax Cuts and Jobs Act (H.R. 1)

- Repealed the Corporate AMT
- Increased the Individual AMT exemption amounts

Effective for tax years beginning after December 31, 2017



THE PATH ACT (2015)

The PATH Act (2015) made **THREE** major enhancements to the R&D Tax Credit

- Permanent Extension
- Payroll Tax Offset
- Alternative Minimum Tax (AMT)



PAYROLL TAX OFFSET

Allows qualified startup businesses to claim up to \$250,000 of the R&D tax credit against their payroll taxes

- A qualified startup is defined as a company with less than \$5 million in gross receipts (for the current tax year) and no gross receipts for any tax year preceding the five tax year period ending with the tax year.
 - If first year of election is 2019, must have had no gross receipts in a tax year preceding 2015
- Can not make election for more than 5 years
- Gross receipts are not required (companies with no gross receipts can make the election and use the credit).



PAYROLL TAX OFFSET (CONT.)

Election starts the first quarter after the return is filed

- If return is filed March 2019, would be able to use the credit against payroll taxes generated the 2nd quarter of 2019

Good Candidates for the payroll election:

- Small business and Start-up companies
- Loss position companies
- Companies that have little or no federal tax liability



AMT OFFSET

Eligible small businesses can use credit to offset AMT for tax years beginning after December 31, 2015

- An **eligible small business** is defined as a non-publicly traded company having an average of \$50 million or less in gross receipts for the prior three tax years
- Provision is similar to the AMT relief in 2010
- Unused credits can be carried back or forward

Cannot be a publicly-traded company

Reminder: The Corporate AMT was repealed and the Individual exemption amounts were increased for tax years beginning after December 31, 2017 (Tax Cuts & Jobs Act)



A top-down view of a meeting table with people, laptops, papers, and coffee cups. The scene is dimly lit, with a dark overlay. The table is made of dark wood. Several people are seated around the table, their hands and arms visible. They are working with papers, laptops, and coffee cups. One person is holding a pen over a document. Another is looking at a laptop screen. There are several coffee cups scattered on the table. The overall atmosphere is professional and focused.

Audit Considerations

AUDIT CONSIDERATIONS AREAS OF CONTROVERSY

- Substantiation
- Nexus
- Funded Research
- Base Period
- Qualified Activities
- Business Component
- Internal Use Software
- Gross Receipts
- Trade or Business Requirement
- Depreciable Property
- Executive Compensation



SUBSTANTIATION WHAT'S THAT MEAN?

- No R&D Specific record keeping requirements
- High degree of variability in research conduct & objectives
- Taxpayers afforded flexibility related to record-keeping/documentation
- Highly subjective in nature
- Subjectivity leads to controversy

CONTEMPORANEOUS DOCUMENTATION EXAMPLES

- Concept Generation & Design
- Functional Requirements
- Project Authorization Requests
- Business Cases / Studies
- Project Schedules
- Budgets
- Design Documents & Revisions
- Architecture Documents
- PowerPoint Presentations
- Release Plans
- Testing
- Test Data / Experimental Runs
- Lab Notebooks
- Progress Reports
- Issue Logs
- Meeting minutes / Notes / Agendas
- Predictive Modeling / CAD Analysis
- Emails relating to R&D
- Record / Documenting Results
- R&D Projects List
- Product Evaluations / Reviews
- Data Sheets
- Reports to Management / Customer
- Lessons Learned
- Whitepapers
- Patents / Patent Applications
- Records of Invention
- Marketing Brochures



CASE STUDIES QUALIFIED ACTIVITIES

Food and Beverage

- Food product formulations to achieve specified analytical requirements, including those related to pH level, brix level, acid content, and product viscosity
- Ingredients and/or formulations
- Packaging, canning, or redesigning existing packaging (e.g. eco-friendly, biodegradable, recyclable, portable, grab-and-go, drinkable, increase shelf-life, etc.)
- Production process specifications and techniques for new food products, including mixing times, batching sequences, and cooking temperatures
- Production processes for efficiency and waste reduction
- Testing product designs to reduce costs, meet new federal/state/local health regulations, ensure consistency, or improve shelf life
- Clean label initiatives
- *Many more...*



CASE STUDIES QUALIFIED ACTIVITIES

Agriculture

- Packaging and design development to sustain product life and freshness
- Hybrid seed development or GMO/Non -GMO
 - Breeding different two different species together
- Mold, disease or parasite resistance
- Brix content
- Speed of growth
- Meat/size content
- Life cycle speed
- Moisture and weather modifications for growth
- Unique software development for logistic operations
- *Many more...*



CASE STUDIES QUALIFIED ACTIVITIES

Winery

- Packaging and design development to sustain product life – Bottles & Corks
- Creating and testing new strains of grapes
- Irrigation systems and row spacing
- Developing cost effective fermentation processes
- Testing and Blending new wine formulations
- Testing formulas to create less toxins
- Creating software to track inventory and vines specific for the wine industry
- Unique software development for logistic operations
- *Many more...*



CASE STUDIES POTENTIALLY QUALIFYING JOB TITLES

- Biologist
- Chemist
- Enologist
- Food Scientist
- Food Technologist
- Food/Beverage Formulator
- Manufacturing Engineer
- Packaging Engineer
- Scientists
- Agronomists
- Botanist
- Master Grower
- Horticulturist
- Pharmacology
- Software Developer
- Growers
- Extractors
- Product Development Associate
- Quality Assurance (QA) Technician





**Chief Counsel Memorandum
(10/15/2021)**

CHIEF COUNSEL MEMORANDUM (CCM) (10/15/2021)

For a taxpayer's refund claim for the I.R.C. § 41 research credit to be valid, the taxpayer must, at a minimum:

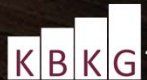
- Identify all the business components to which the I.R.C. § 41 research credit claim relates for that year.
- For each business component:
 - identify all research activities performed;
 - identify all individuals who performed each research activity; and
 - identify all the information each individual sought to discover.
- Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year (this may be done using Form 6765, Credit for Increasing Research Activities).



CCM (10/15/2021) – CONT.

- A CCM is not tax authority - It's the way the IRS is going to administer the law and how they will direct their audits.

- CCM states, "Refund claims may be made on either original returns or amended returns."
 - The CCM may apply to all R&D credit claims (original returns and amended returns), but:
 - Original return in this context means only for taxpayers that don't file their original return on time, and thus need to file a claim for refund when they file their original return.
 - If the IRS views claims on original returns filed timely in the same light as claims for refund, it is expected the IRS will update Form 6765 to include a section for the additional information outlined in the CCM.



SOLUTIONS FOR TAX PROFESSIONALS AND BUSINESSES
TAX CREDITS • INCENTIVES • COST RECOVERY

NATIONWIDE SERVICE | 877.525.462 | KBKG.COM



For more information contact
Todd French at (312) 645-6006
Todd.French@kbkg.com



R&D Tax Credits for the Foodservice Design and Consulting Industry

KBKG

Tax Credits, Incentives, Cost Recovery



Offices Nationwide



(312) 645-6006



Todd.French@KBKG.com



www.KBKG.com

About KBKG

Established in 1999 with offices in major markets throughout the US, KBKG is one of the oldest and largest independent providers of specialty tax studies in the country. By focusing exclusively on value-added tax services, we complement your traditional tax and accounting team.

SINGLE SOURCE SOLUTION

We are unique in the marketplace as we offer a single-source solution for research & development tax credits, depreciation/cost segregation, green energy tax incentives, transfer pricing, IC-DISC federal export tax incentives, and more. We provide you with a single point of contact who will serve as a liaison, connecting you with the appropriate technical experts on our team.

SEAMLESS TEAMWORK & COLLABORATION

We help determine which tax programs benefit clients and stay committed to handling each relationship with care and diligence. Our ability to work seamlessly with your team is the reason so many tax professionals and businesses across the nation trust KBKG.

Our practice is staffed by full-time specialists with engineering, valuation, green building, estimating, and construction backgrounds as well as tax professionals, attorneys, and CPAs.

Nationwide Service

RESEARCH & DEVELOPMENT TAX CREDIT

The Research & Development (R&D) Tax Credit is a federal tax credit designed to promote innovation in the United States. This incentive not only allows for look-back studies that can recognize unclaimed credits for open tax years, but small businesses and startups can also take advantage of the credit to offset payroll taxes.

APPLICABLE CLIENTS & INDUSTRIES

Applicable clients include companies developing new or improved products, processes, software, or formulas, as well as companies that employ those with technical backgrounds (e.g., software development, engineering). Common industries include:

- Food Service
- Manufacturing
- Architecture
- Machining
- Engineering
- Foundries
- Automobile
- Software Development
- Equipment or Tool
- Life Sciences
- Chemical & Formula
- Aerospace & Defense

HOW MUCH IS IT WORTH?

Roughly 10% of Total Qualified R&D Expenses

Example: Client has \$1M/year of wages related to R&D = \$100k in gross credits per year.

Many states also offer R&D tax credits. For example, the CA R&D Credit is worth an additional 7.5% of Qualified R&D expenses.



R&D TAX CREDITS: FOODSERVICE CONSULTING

FOODSERVICE CONSULTING

Many companies involved with Foodservice consulting are unaware that their efforts within designing and developing their products can yield a large amount of research credits. Examples of R&D activities related to the industry as well as potentially qualifying job titles are listed below.

EXAMPLES OF QUALIFYING R&D ACTIVITIES

RELATED TO THE DEVELOPMENT OF NEW OR IMPROVED:

- Achieving Leadership in Energy and Environmental Design (LEED) certification
- Developing new or improved designs for beverage systems
- Designing new or improved food production systems
- Designing new information technology (IT) solutions
- Developing new or improved designs for laundry systems
- Developing unique functional and energy-efficient designs
- Developing new or improved waste management systems
- Designing new or improved sustainability solutions
- Developing new or improved designs for workstations

POTENTIALLY QUALIFYING R&D JOB TITLES

- Computer-Aided Design (CAD) Operator
- Project Coordinator
- Project Manager
- Engineer
- Designer
- Drafter
- Project Architect

CASE STUDY

FOODSERVICE DESIGN AND CONSULTING FIRM

Annual Revenue: \$4.3 Million

RESULTS:

\$250,000

In Federal & State R&D Tax Credits