
*Older people sit down
and ask, 'What is it'
but the boy asks, 'What
can I do with it?'*

Steve Jobs.

New Legislation: The Research and Development Tax Credit Provisions.

The Tax Extenders Bill

The purpose of this **Flash** is to provide additional details regarding the Research and Development Tax Credit (R&D), due to the significant benefits that will be derived. The R&D tax credit expired December 31, 2014, but the new law retroactively reinstates the credit to January 1, 2015. More importantly, the new law also makes the R&D tax credit permanent, providing businesses and taxpayers clarity on the continued status of this lucrative tax benefit.

The R&D Credit is wide-ranging and is available to businesses in most industries, including but not limited to:

- **Manufacturing**
- **Software Design**
- **Financial and Professional Services**
- **Technology**
- **Construction**

The R&D Credit is primarily a wage and consulting fee-based credit pertaining to employees and contractors who perform, directly supported or directly supervised qualified research activities performed in the U.S.

The qualified research activities eligible for the credit must meet the following requirements:

- **Must be technological in nature**
- **Must be for a permitted purpose**
- **Technical uncertainty must be eliminated**
- **Must involve a process of working through the tech uncertainty**

Success of development is not necessary for the expenses to qualify; time incurred related to delays, redesigns and failures are all great examples of eligible R&D Costs. Patents and applications are also excellent support for R&D.

In addition to the permanent extension, there are two significant pro-taxpayer changes to the application of the R&D Credit which will make it available to many taxpayers that have previously been discouraged from pursuing it or were not eligible to take advantage of its benefits in the past.

*‘If you change the
way you look at
things, the things you
look at will change’*

Unknown

New Components

Effective 1/1/2016

1. **Payroll Tax Credit Available for Start-Up Businesses:** Allows qualified small businesses to elect to utilize the R&D credit to reduce the FICA tax liability. A qualified small business is defined as a Corporation, Partnership, LLC or Sole Proprietorship which is less than 5 years old with less than \$5 million in annual gross receipts in each to the preceding 5 years. The Payroll Tax Credit will be refundable up to \$250,000 in payroll taxes per year. Any excess credit can be carried forward to future years.
2. **Credit Allowed Against Alternative Minimum Tax:** The R&D Credit will now be allowed to offset Alternative Minimum Tax (AMT) in the case of eligible small businesses or owners. An eligible small business under this provision is liberally defined as a private company with average annual gross receipts not exceeding \$50 million for the prior three years. The R&D tax credit for pass-through entities, such as S Corporations, LLC’s and Partnerships, which meet this threshold will be available to the members, partners or shareholders to reduce their personal income tax liabilities even if they are subject to AMT Tax. Any unused credits can be carried back one year and forward 20 years.

Previous use of the credit against an individual's AMT was not permitted. The IRS estimates that more than four million taxpayers who are subject to AMT are potentially eligible to reduce their tax liability through the now modified R&D tax credit rules.

Based on these changes and the new permanence of the credit, this is an **OPTIMUM** time for all businesses to reevaluate the potential benefit from the R&D tax credit.

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