THE R&D TAX CREDIT ROUNDTABLE
presented by MASSIE

ROUNDTABLE RECAP

EXECUTIVE SUMMARY	**Date:** Wednesday, December 12, 2018 **Time:** 3:00-4:00pm EST
ATTENDEES:	Alston & Bird, Caterpillar, United Launch Alliance, Bayer, Karl Storz, The Coca-Cola Company, Becton Dickinson, Effective Training Services, Robert Bosch LLC, Nifco, Hamilton Beach, Cummins, Applied Medical, Arbor Pharmaceuticals, AMD, iHerb, Old Dominion Freight Line, MailChimp, Integra, Tennant, Macy's, Infor, BDO, Tel FSI, Encompass Health Corporation, Stanley Black & Decker, H&M Shared Services, Pharr, CommScope, Calsonic Kansei North America, Zoll, Health Equity, AT&T, Oracle, Lockheed Martin
SPEAKERS:	• **Jason Massie & Peter Green,** *MASSIE R&D Tax Credits, Alpharetta, GA* • **George Abney,** *Alston & Bird, Atlanta, GA* • **Ron Willis** *United Launch Alliance, Centennial, CO* • **Steve Oertel,** *Bayer, Pittsburgh, PA* • **Dan Mansfield** *Caterpillar, Peoria, IL*

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TODAY'S AGENDA

1. INTRODUCTIONS AND ANNOUNCEMENTS

Peter Green and Jason Massie
MASSIE R&D Tax Credits, Alpharetta, GA

2. LEGISLATIVE UPDATE

George Abney & Sam Kaywood
Alston & Bird

3. R&D TAX CREDIT ANALYTICS:

HOW TO BOOST AUDIT SUPPORT BY PROVIDING A "STORYBOARD" OF MEANINGFUL PATTERNS IN YOUR DATA

Ron Willis, *United Launch Alliance*
Steve Oertel, *Bayer Corporation*
Dan Mansfield, *Caterpillar*
Jason Massie, *MASSIE R&D Tax Credits*

4. WRAP UP

Peter Green and Jason Massie
MASSIE R&D Tax Credits, Alpharetta, GA

THE R&D TAX CREDIT ROUNDTABLE

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LEGISLATIVE UPDATE

ALSTON & BIRD

George Abney, Partner
Atlanta, Washington, D.C.

Phone: 404.881.7980 Other Phone: 202-239-3980
Email: george.abney@alston.com

IRS Controversy & Legislative Update

December 13, 2018

George B. Abney
Alston & Bird, LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
george.abney@alston.com
404/881-7980

ALSTON&BIRD LLP

U.S. Tax Court

TSK of America Inc., and Subsidiaries v. Commissioner,

U.S. Tax Court Docket No. 4766-17

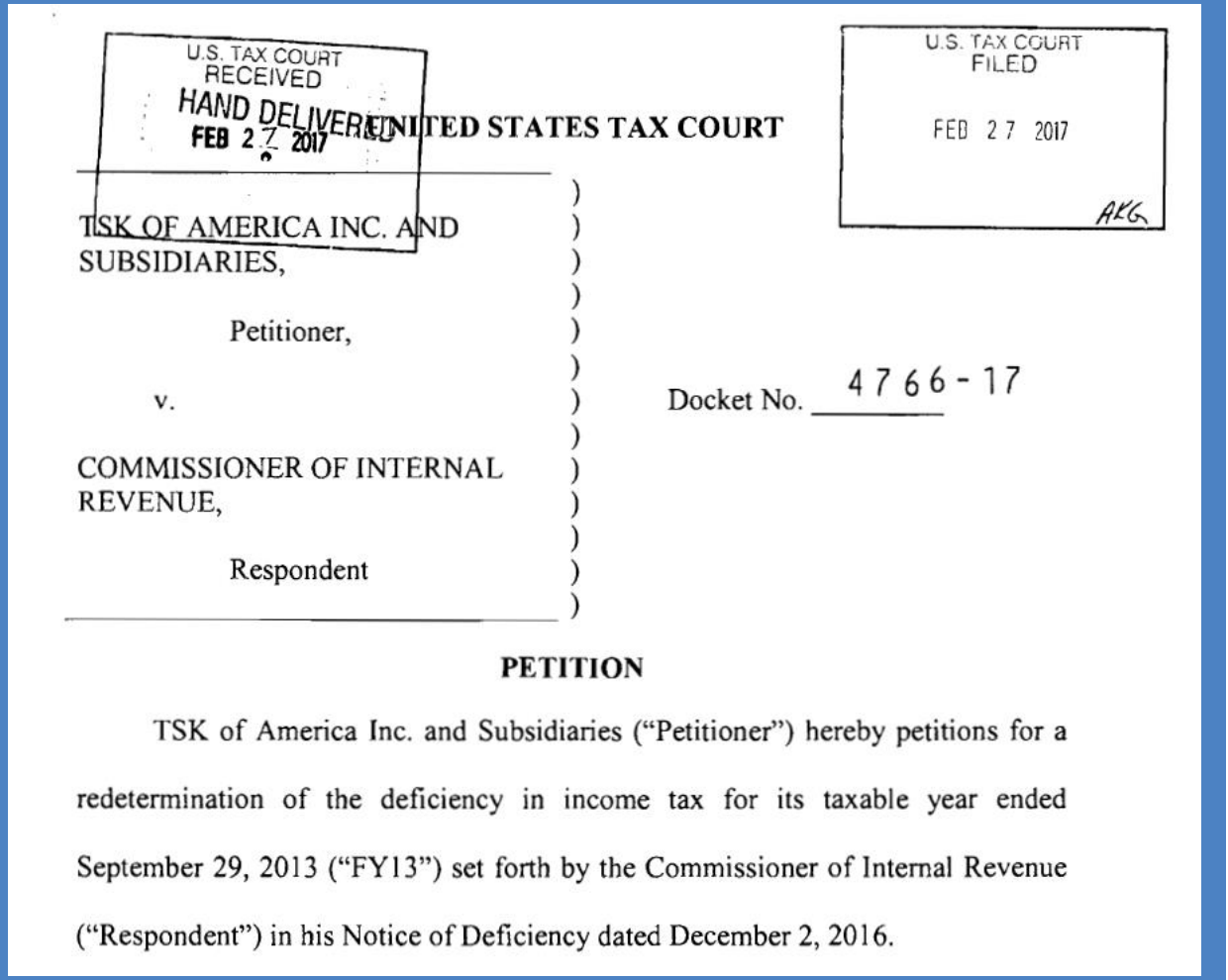
U.S. Tax Court

TSK of America Inc., and Subsidiaries

v.

Commissioner,

U.S. Tax Court Docket No. 4766-17



U.S. TAX COURT
RECEIVED
HAND DELIVERED
FEB 27 2017

U.S. TAX COURT
FILED
FEB 27 2017
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UNITED STATES TAX COURT

TSK OF AMERICA INC. AND SUBSIDIARIES,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 4766-17

PETITION

TSK of America Inc. and Subsidiaries ("Petitioner") hereby petitions for a redetermination of the deficiency in income tax for its taxable year ended September 29, 2013 ("FY13") set forth by the Commissioner of Internal Revenue ("Respondent") in his Notice of Deficiency dated December 2, 2016.

3. **Amount in Dispute.** Respondent determined a deficiency in Petitioner's FY13 income tax in the amount of $503,416. Petitioner disputes the entire alleged deficiency.

4. **Assignments of Error.** Respondent erred in determining that Petitioner's FY13 research credit was $332,385 instead of $835,801, the amount of research credit to which Petitioner is entitled after certain agreed adjustments, and in reducing Petitioner's FY13 general business credit and increasing Petitioner's FY13 income tax by $503,416. More specifically, Respondent erred in determining that expenses of approximately $8.04 million that Petitioner paid or incurred in FY13 to acquire tools for use in conducting qualified research to develop new products, tooling, processes, and other business components were not qualified research expenses ("QREs") under section 41(b)(2)(A)(ii).

UNITED STATES TAX COURT

TSK OF AMERICA INC. and SUBSIDIARIES,	)	
Petitioner,	)	
v.	)	Docket No. 4766-17
COMMISSIONER OF INTERNAL REVENUE,	)	Filed Electronically
Respondent.	)	

ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. Admits.

2. Admits.

8.14.18

UNITED STATES TAX COURT

TSK OF AMERICA INC., and SUBSIDIARIES,	)	
Petitioner,	)	
v.	)	Docket No. 4766-17
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

DECISION

Pursuant to the agreement of the parties in this case, it is

ORDERED AND DECIDED: That there is no deficiency in income tax due from, nor overpayment due to, petitioner for the taxable year ended September 29, 2013.

(Signed) Ronald L. Buch
Judge

Legislative Update

EVALUATION OF THE RESEARCH AND DEVELOPMENT TAX CREDIT

DEPARTMENT OF LEGISLATIVE SERVICES 2018

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

October 2018

Executive Summary

There Is No Evidence That the R&D Tax Credit Is Effective

Recommendation: The General Assembly should consider terminating the R&D tax credit and instead explore other options to increase innovation in the State, such as providing a federal Small Business Innovative Research matching grant to encourage R&D in Maryland or providing grants aimed at increasing human capital in science and technology fields.

Large Businesses Earn Most Credits

Recommendation: The General Assembly should consider setting aside a portion of the tax credits to be allocated for R&D expenditures by small businesses.

THE R&D TAX CREDIT ROUNDTABLE
presented by MASSIE

MEMBER SPOTLIGHT

Presenter: Ron Willis
United Launch Alliance

ULA®
United Launch Alliance

MASSIE R&D CREDIT ROUNDTABLE

Trends & Analytics

Trend Analysis

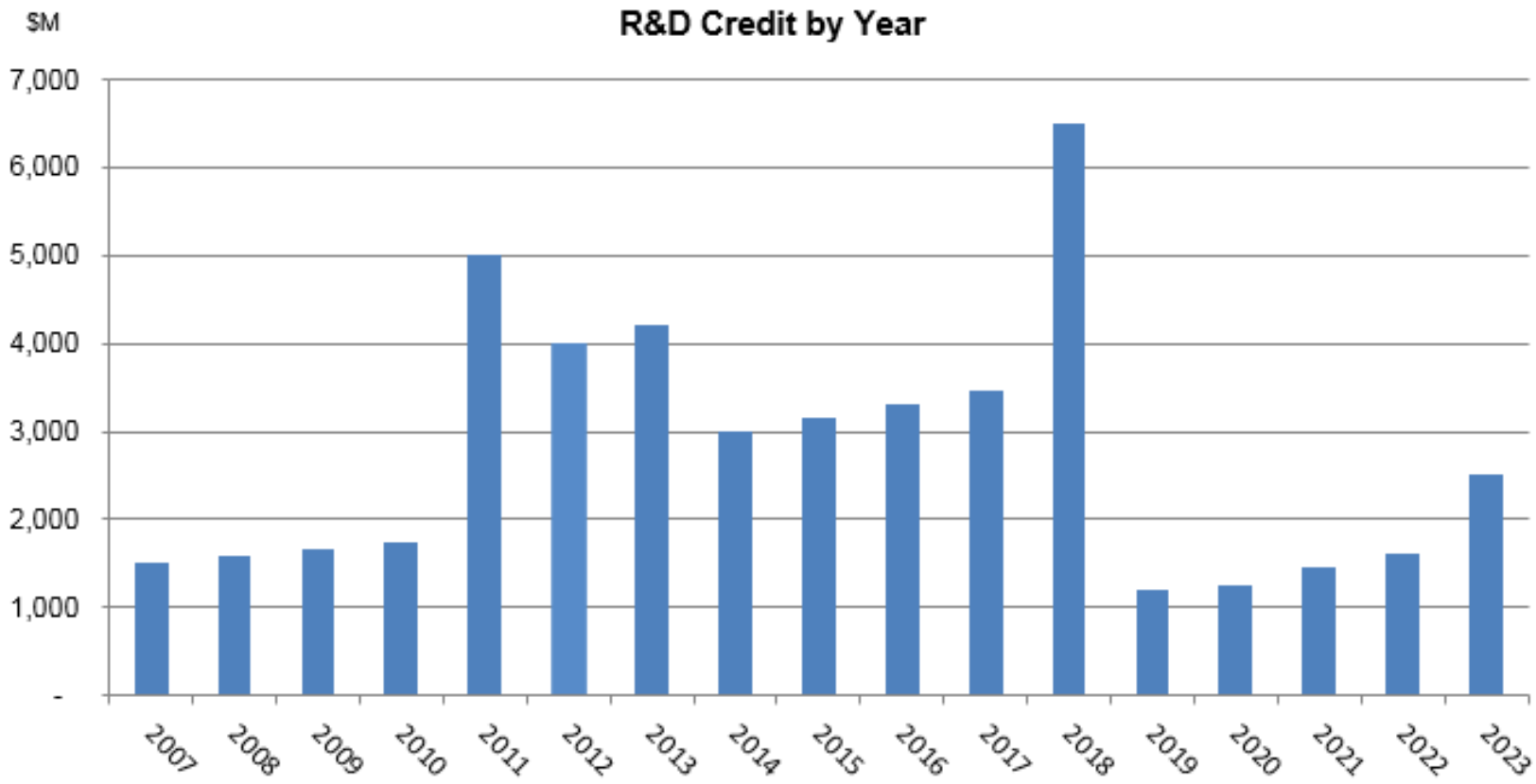
- **Identify indicators for analysis**
- **QREs, Credit, etc.**
- **Level of detail**

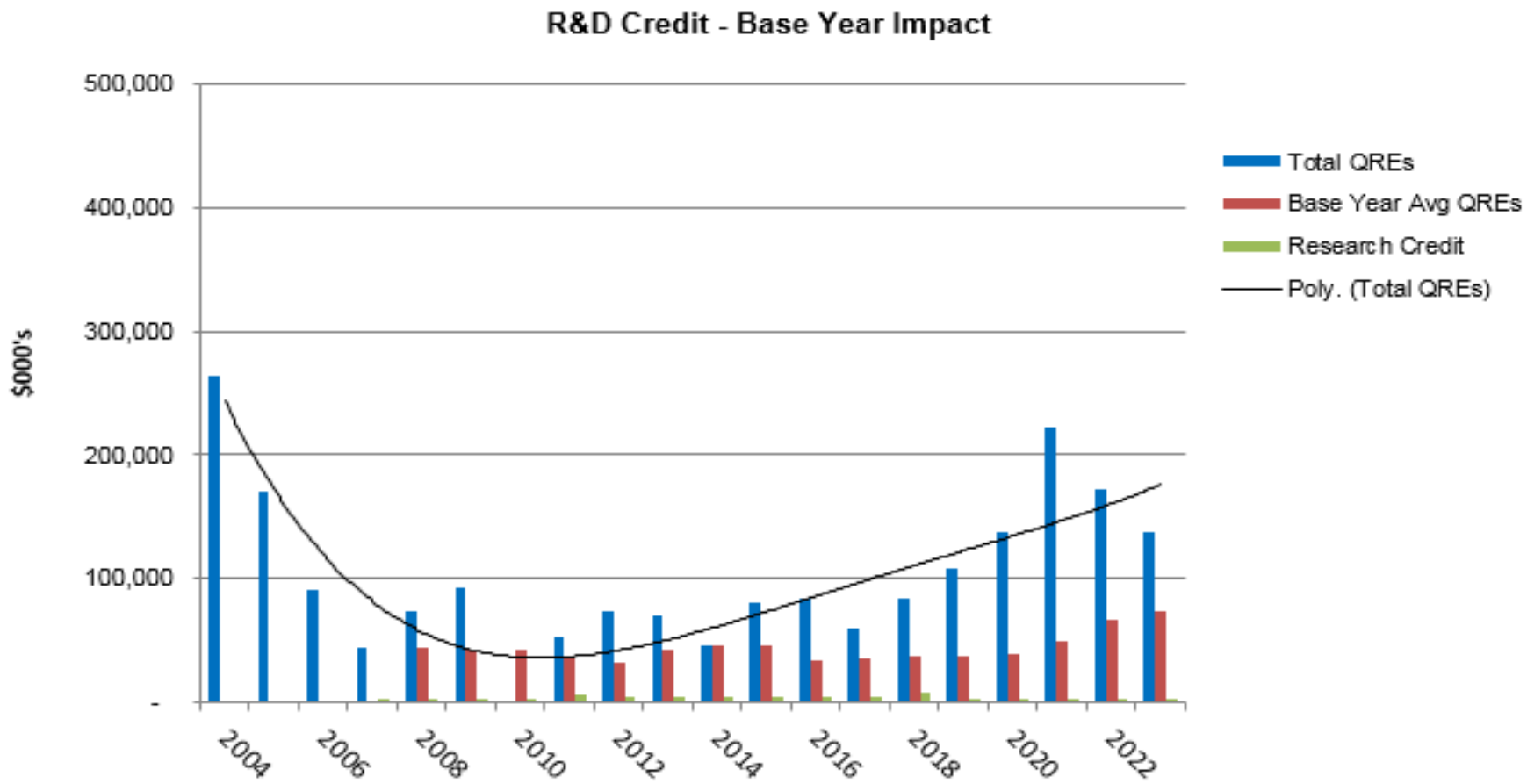
- Format
  - **Spreadsheet – can be difficult to read**
  - **Chart – easy to understand; ideal for presentations**

12.12.18

ULA Proprietary & Confidential

ULA™


R&D Credit by Year
$M
7,000
6,000
5,000
4,000
3,000
2,000
1,000
-
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023


R&D Credit - Base Year Impact
$000's
500,000
400,000
300,000
200,000
100,000
-
2004
2006
2008
2010
2012
2014
2016
2018
2020
2022
Total QREs
Base Year Avg QREs
Research Credit
Poly. (Total QREs)

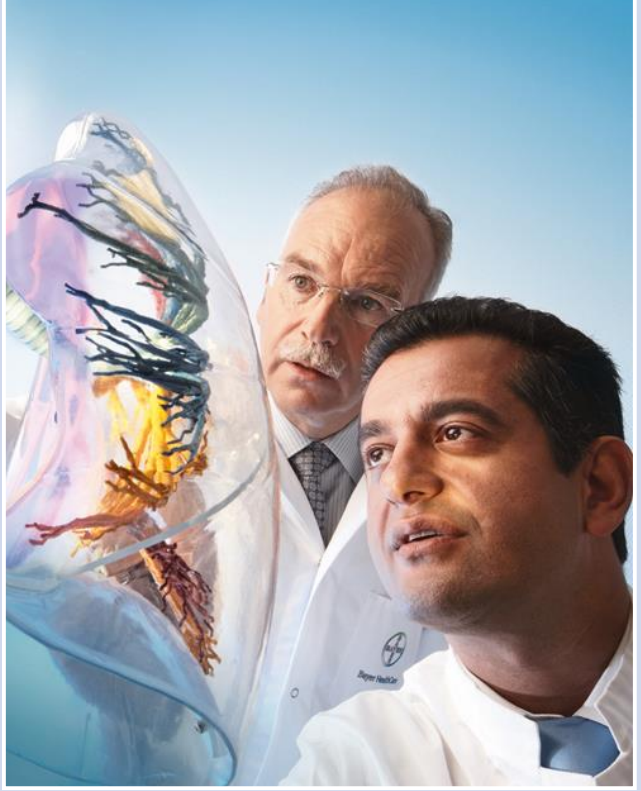
THE R&D TAX CREDIT ROUNDTABLE

presented by MASSIE

MEMBER SPOTLIGHT

Presenter: Steve Oertel
Bayer Corporation

BAYER



Science For A Better Life

BAYER R&D Analytics

Presentation December 12th, 2018

Analytics (1 of 3)

At Bayer, we use Analytics for 3 primary reasons:

1. To ensure that we're capturing all relevant costs which we're entitled to (for our R&D incentives)
2. Prepare for IRS audits (coupled with a story)
3. Learn more about our various businesses

Analytics (2 of 3)

For analysis, we separate QRE data into 3 groups:

- "A" – those which have cost center data in both years
- "B" – those which only have cost center data in the prior year
- "C" – those which only have cost center data in the current year

"A" Group

Calculate % change, compare Wages (should see slight increase if Q %'s are consistent). For S&K, may need to look at Vendor spend.

"B" Group

Review Employee names in the prior year cost center data to see if they are still with the Company, and if so, are they included in a qualified cost center for the current year.

"C" Group

Interview cost center managers to understand the cost center activities, then review Employee list (including titles) to determine Q %'s. Also, review significant Vendor spend.

Analytics (3 of 3)

Notes :

- Try to think from the perspective of an outsider/auditor.
- Rely on Analytics, but don’t lose sight of the “big picture”.
- Every situation is different, so develop your Analytics to best fit yours.

THE R&D TAX CREDIT ROUNDTABLE

presented by MASSIE

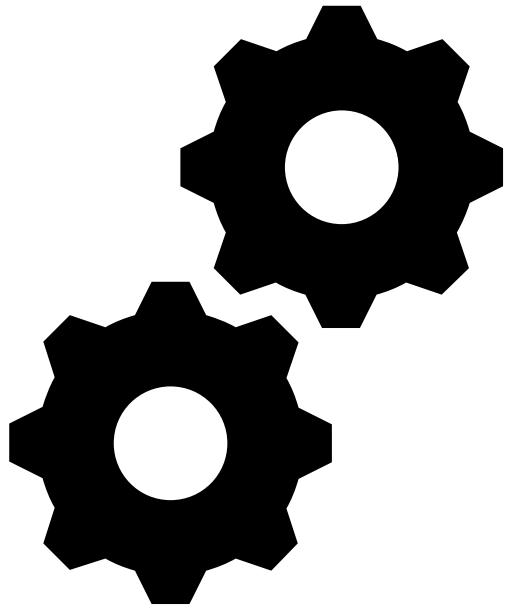
MEMBER SPOTLIGHT

Presenter: Dan Mansfield
Caterpillar

CATERPILLAR®

Caterpillar Tax R&D Analytics

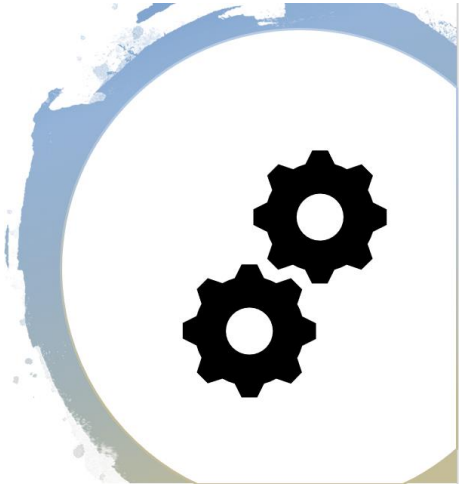
Understanding
Supporting
Maximizing



Caterpillar Tax R&D Analytics

- *Understanding … Do results make sense?*
  - Use of Microsoft Access and Excel Tools
  - Large volume of data … thousands of surveys
  - Compare Prior Year to Current Year QRE's
  - Analyze for unusual trends
  - Report out to Business Units

- *Supporting … Audit and Provision*
  - Justify Tax Provision Estimates
  - Assist with audit sample selections



Caterpillar: Confidential Green

Caterpillar Tax R&D Analytics

- *Maximizing … Asking the right questions*

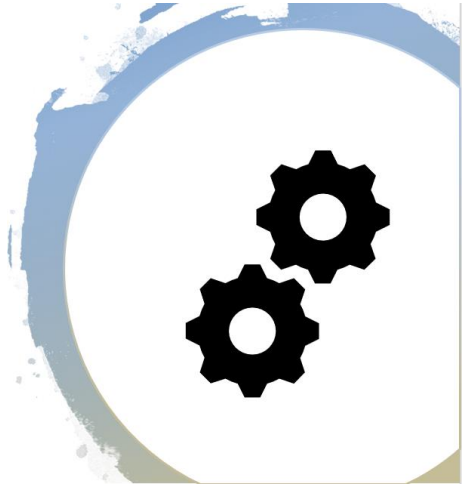
Priority focus based on materiality
Do Employee Allocations make sense?
Are projects qualified correctly?
Were any Cost Centers overlooked?
Were any Projects overlooked?

Caterpillar: Confidential Green

Caterpillar Tax R&D Analytics

Sample Cost Center Analysis

						Actual QRE	Actual QRE		Estimated 2017
BUS_UNIT_CD	BUS_UNIT_DESC	DEPT_NO	DEPT_NM	DIV_SEC	DIV_NM	2016	2017	Difference	R&D Tax Benefit
SL	LPSD CAT BRAND ENGINES PCTR	J0872	E&ES - INFO & GUIDANCE SYSTEMS	87280	GED-NA LPSD LED OPERATIONS		$0	$0	$0
SL	LPSD CAT BRAND ENGINES PCTR	J0900	AU GENERAL CONSTRUC PDC-DUMMY	08002	DPP CORE PRODUCT SUPPORT		$0	$0	$0
SL	LPSD CAT BRAND ENGINES PCTR	J0900	LEC ACCOUNTABLE ROLL-UP	06402	C175 BLOCKS		$0	$0	$0
SL	LPSD CAT BRAND ENGINES PCTR	J0900	LEC ACCOUNTABLE ROLL-UP	06403	3408 BLOCKS		$0	$0	$0



Caterpillar: Confidential Green

THE R&D TAX CREDIT ROUNDTABLE
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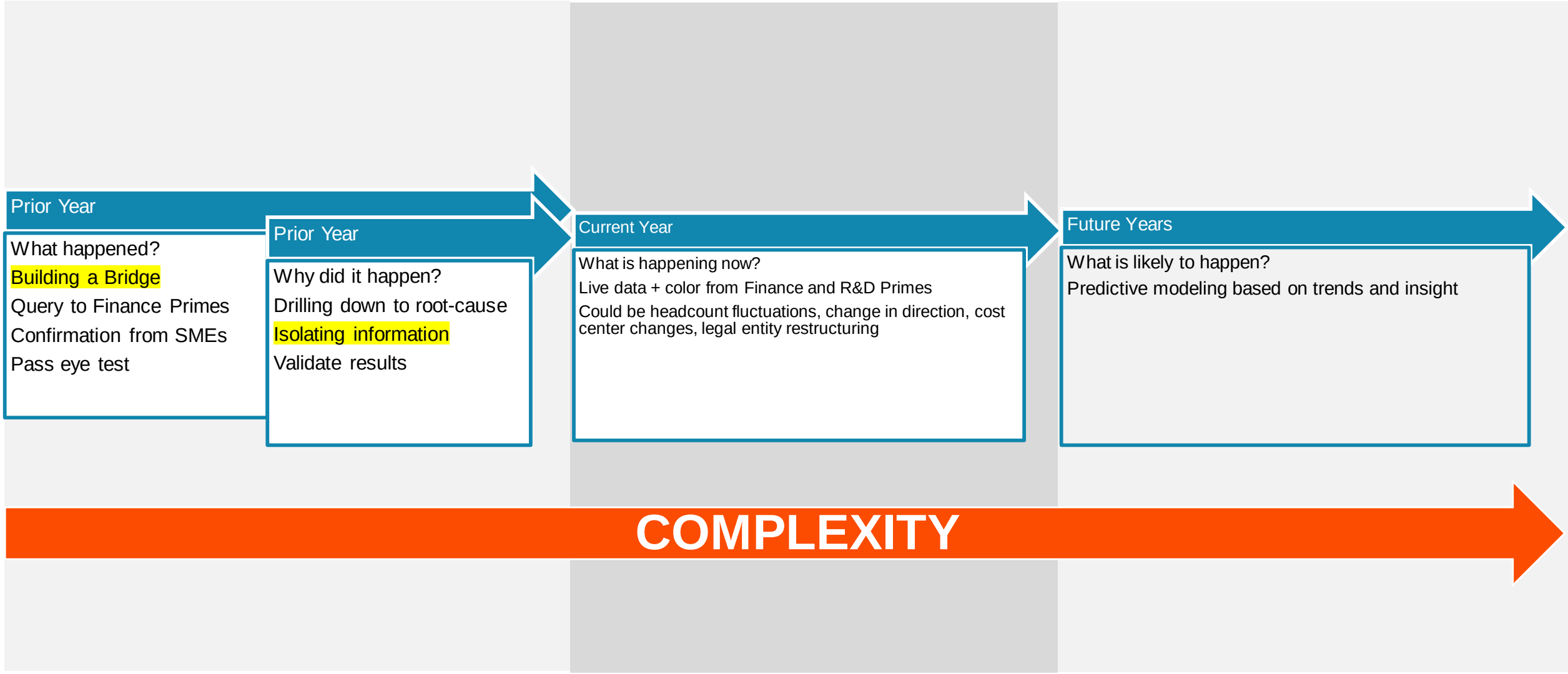
SPOTLIGHT ON ANALYTICS

Presenter: Jason Massie
Massie R&D Tax Credits, Alpharetta, GA

1. WHAT HAPPENED?
2. WHY DID IT HAPPEN?
3. WHAT IS HAPPENING NOW?
4. WHAT IS LIKELY TO HAPPEN?

RESEARCH CREDIT ANALYTICS



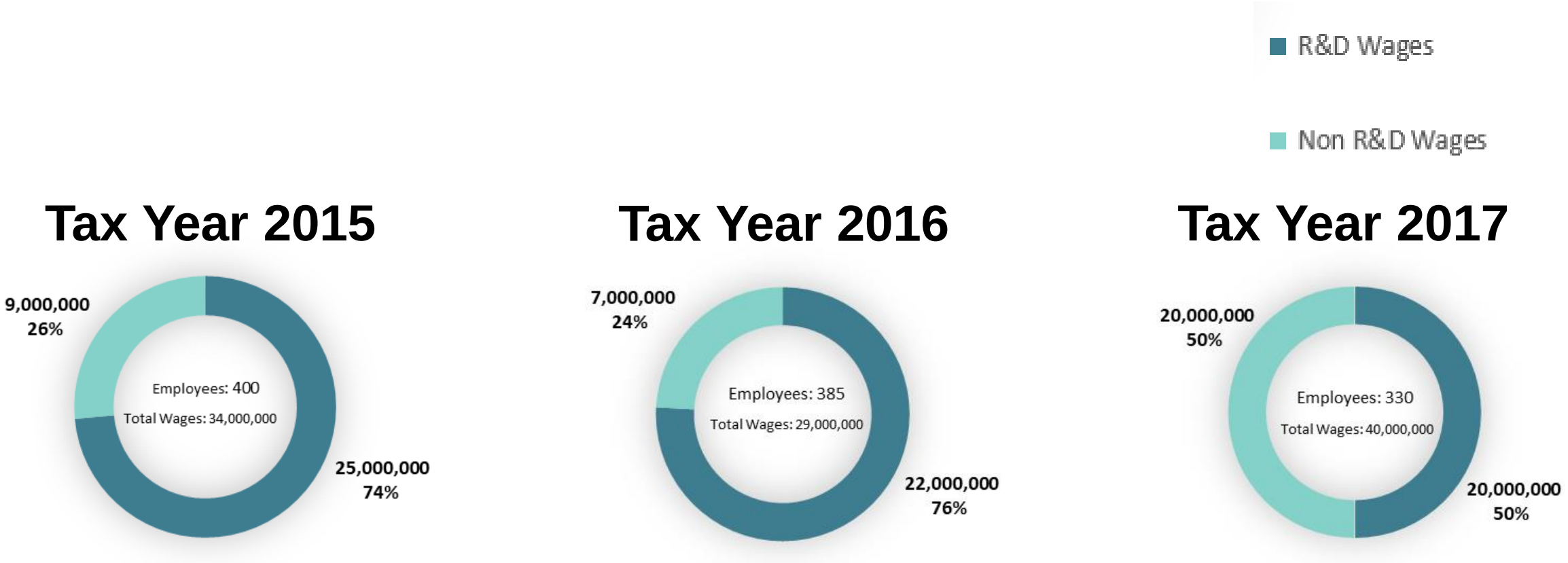
COMPARISON ANALYTICS EXAMPLE

BRIDGE EXAMPLE

Activities Bridge	W2 Amount	Wage QRE Amount		R&D%	Total HC	Total R&D HC	Avg Wage QRE/HC
2016 Total	45,000,000	22,000,000	*	49%	640	385	65,000

R&D EMPLOYMENT WAGE ALLOCATION

How R&D employees spent less time on R&D projects in TYE 2017 which led to fewer QREs, although the overall wage amount remained constant.

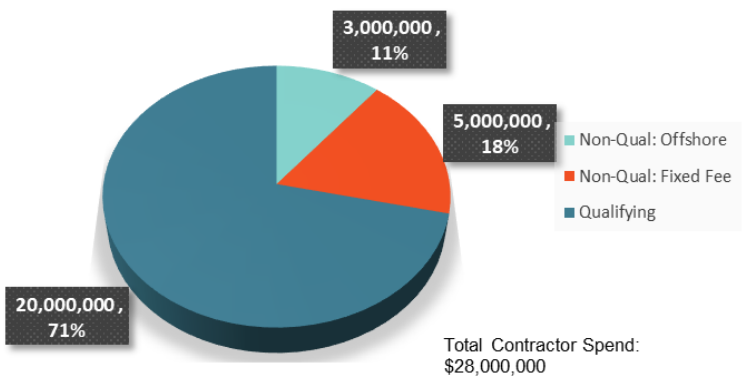


CONTRACT RESEARCH EVALUATION

Overall spend stayed constant

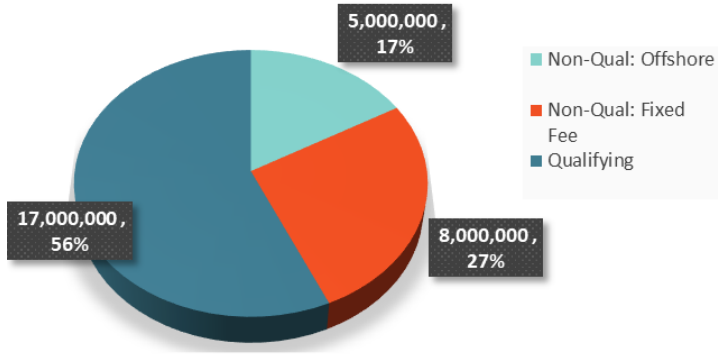
- Total Q contractors decreased
  - WHY?
    - Because offshore and fixed fee contracts increased

Tax Year 2015

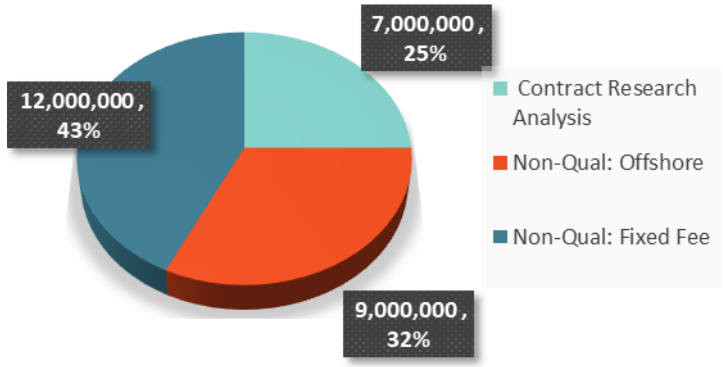


Total Contractor Spend: $28,000,000

Tax Year 2016

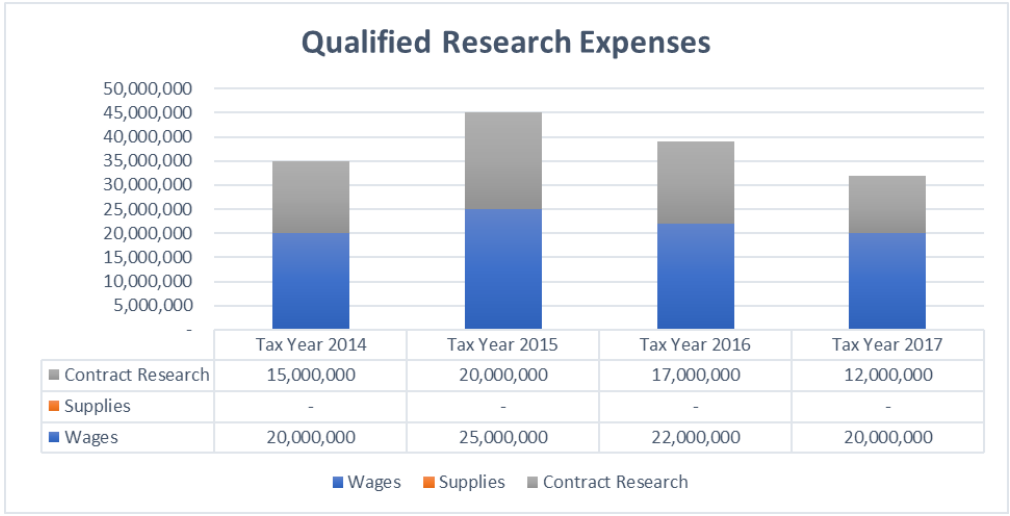


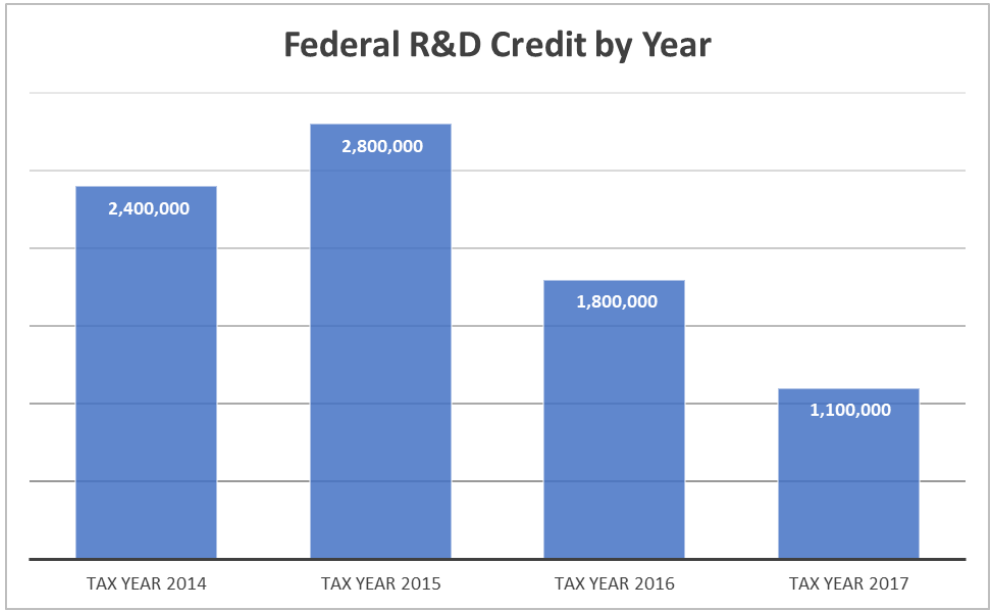
Tax Year 2017

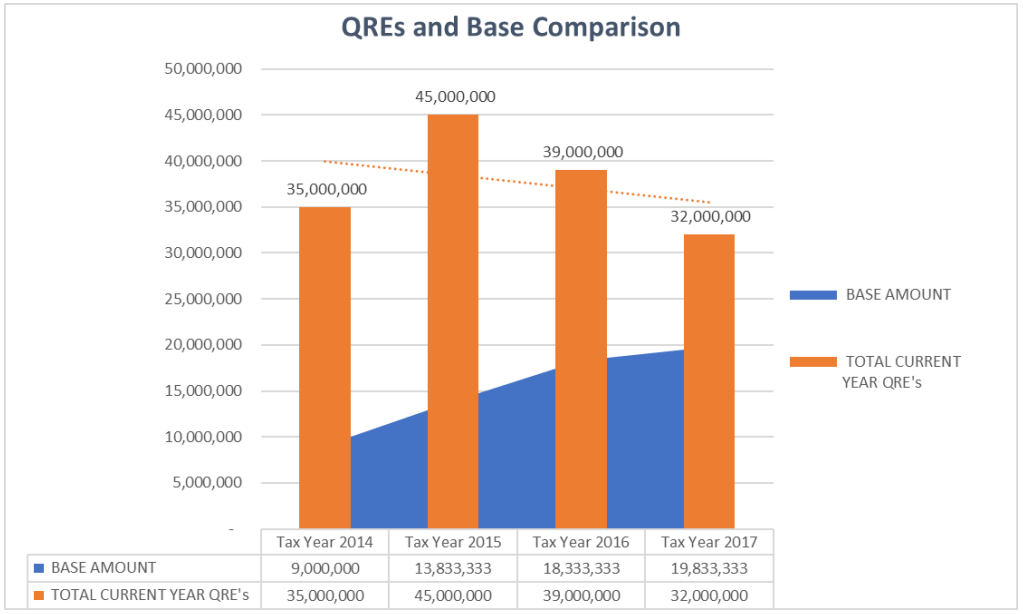


THE CORRELATION BETWEEN QRES AND CREDIT AMOUNT

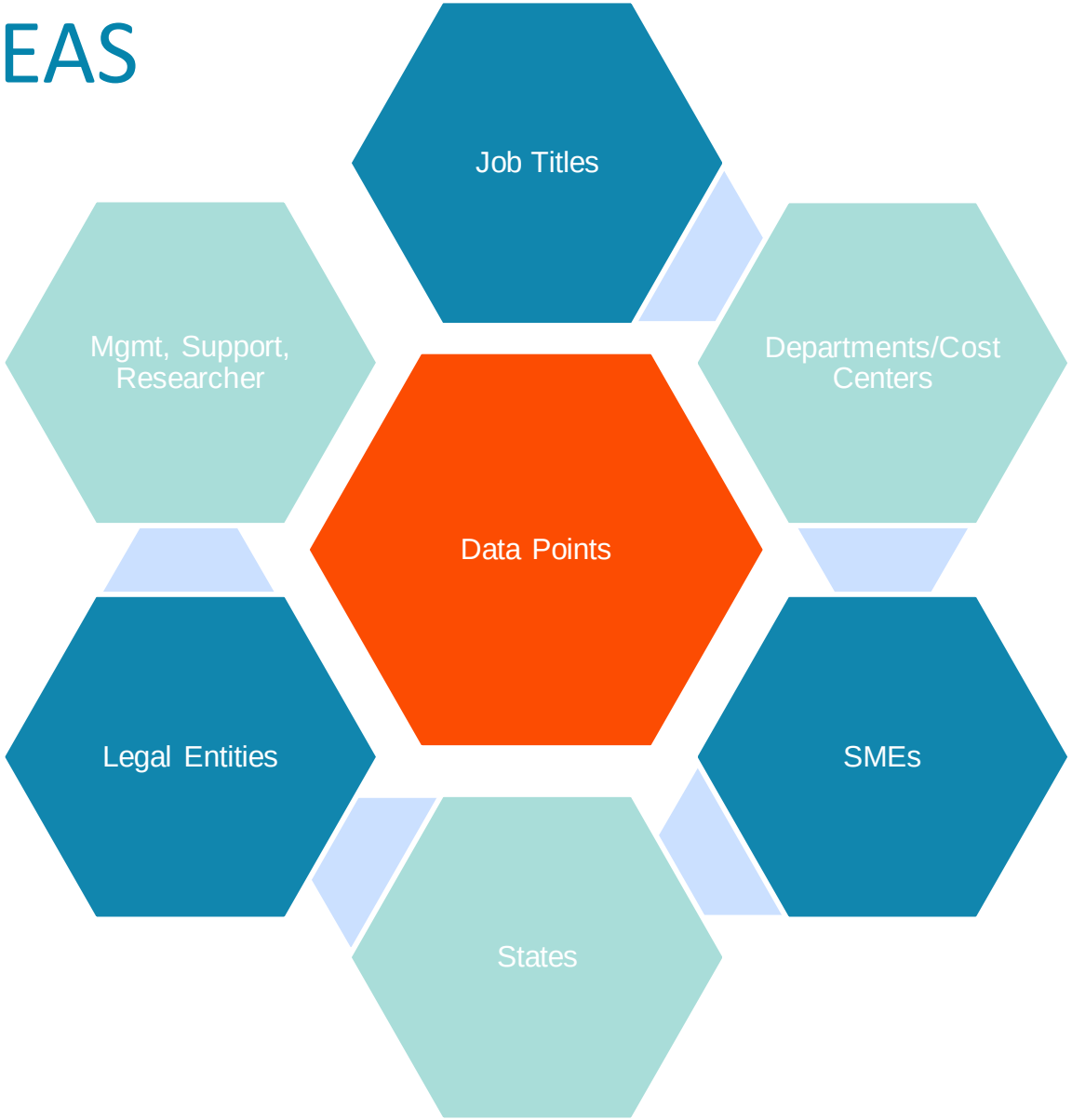
These charts show the direct correlation between QREs and Credit amount, while the QREs and Base Comparison chart shows the impact of high QREs in PY on current year credit and how the combination of high base and lower CY QREs led to a lower credit amount.







ANALYTICS AREAS



Check

- Understanding
- Complete
- Consistent
- Trends
- Exposure Areas
- Opportunities

Next ROUNDTABLE:
Wednesday, March 6th @ 3PM EST

THANK YOU