

ROUNDTABLE WHITE PAPER

THURSDAY, SEPTEMBER 16TH, 2021 | 3:00-4:00PM ET

Q3 ROUNDTABLE
SEPTEMBER 2021

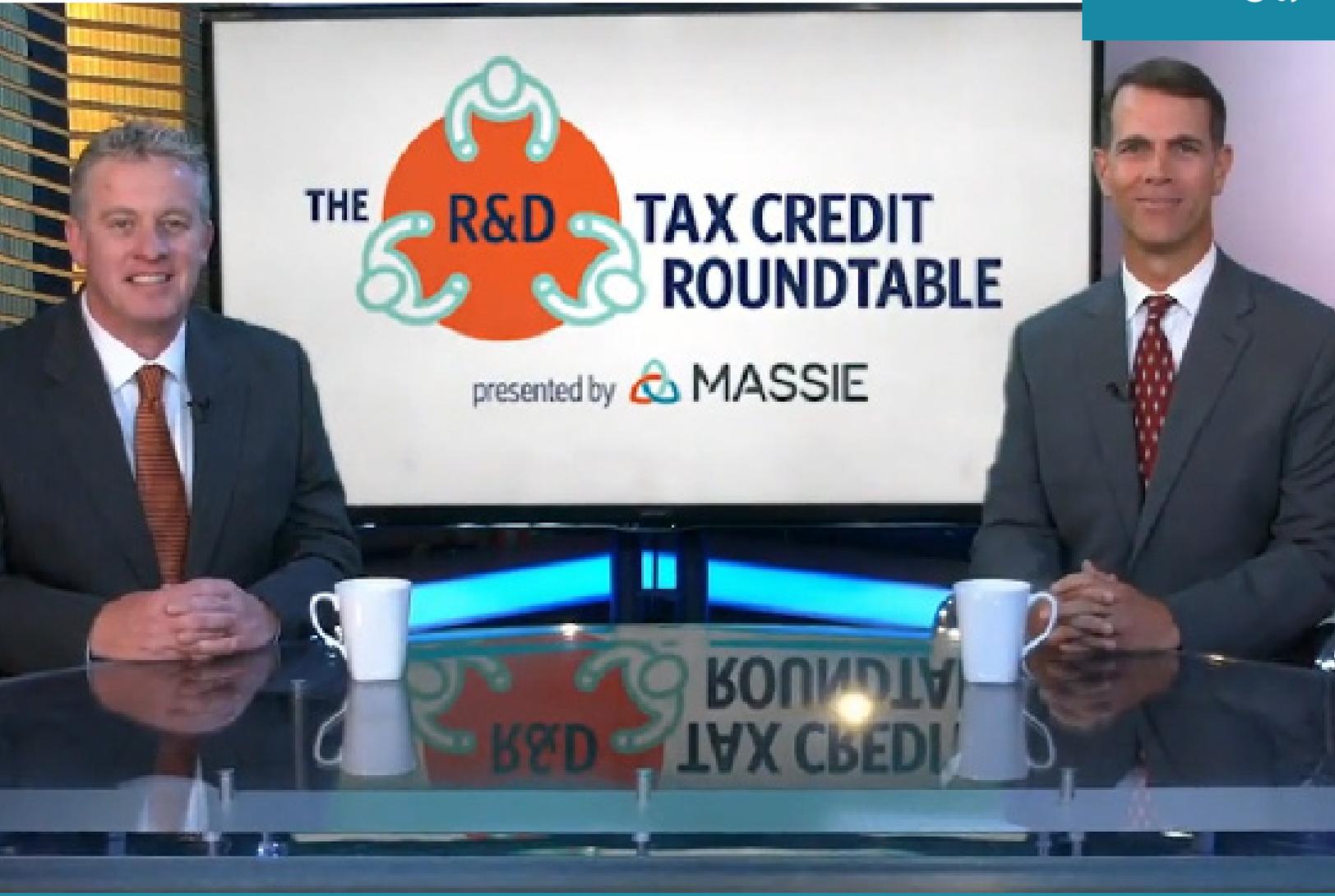
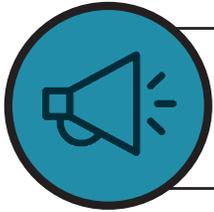


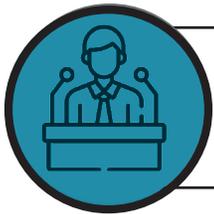
Table of Contents



Introductions and Announcements

Jason Massie and Peter Green of MASSIE R&D Tax Credits

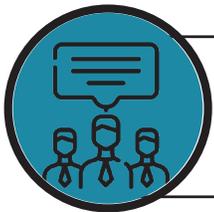
page 4



Avoidable Mistakes from Recent Cases

Alex Sadler of Morgan Lewis

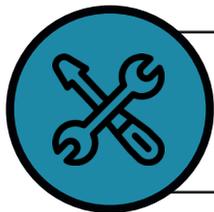
page 4-7



Mega Millions Spotlight

Dan Mansfield of MASSIE R&D Tax Credits

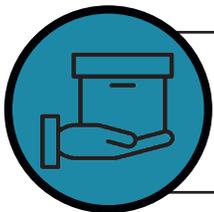
page 7, 8



State Audits: Lessons Learned

Peter De Nicola of FUJIFILM

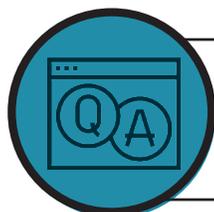
page 8, 9



Keys to a Successful R&D Project

Chris DeRosa of ABIOMED

page 10



Upcoming R&D Best Practice Roundtable and Newsletter Information

page 11



Companies Who Attended

Abiomed
Advanced Micro Devices Inc.
Albany International
Alexion Pharmaceuticals Inc.
Amazon
AptarGroup Inc.
Avnet
BCD Travel
Bottomline Technologies
Bridgestone Americas Inc.
Brunswick Corporation
Cerus
CIRCUSTRIX
CommScope
Constellation Brands
Corteva
Curtis Instruments Inc.
Domtar
Eastman Chemical Company
Equinox
Evonik Corporation
FUJIFILM
General Mills
Gulfstream Aerospace Corporation
Hella Corporate Center USA
Henkel
HollyFrontier Corporation
Ingevity Corporation
International Paper Company

ITW
Ivins Phillips Barker
Justworks Inc.
Konecranes Inc.
L3 Harris Tech.
Land O' Lakes Inc.
Lockheed Martin Corporation
Macy's
Merchants Automotive Group Inc.
Midmark Corporation
Musco
Natus Medical Inc.
Neenah Inc.
Northrop Grumman Corporation
Novocure
PACCAR
PSCU Inc.
SMC Ltd
Starkey
Target Corporation
The Hartford
The Walt Disney Co
Travelers
Ultradent Products Inc.
UPS
Varian Medical Systems Inc.
Victaulic
Vmware Inc.
Watlow Electric Manufacturing Company



MASSIE Notes



Introductions and Announcements

Jason Massie and Peter Green
MASSIE R&D Tax Credits

- Peter Green and Jason Massie opened the Roundtable and introduced the agenda items and featured speakers
- MASSIE R&D Tax Credits would love to partner with your tax organization to deliver fresh and relevant content to your members in a fun and lively CPE accredited webinar. MASSIE has teamed up with Morgan Lewis and Duff & Phelps to offer a variety of content options. For more information please contact our Marketing Coordinator, Jillian Holmes, at jholmes@massietaxcredits.com



Jason Massie



Peter Green



Avoidable Mistakes from Recent Cases

Alex Sadler
Morgan Lewis

- **Little Sandy, Tax Court (2/11/2021) (the 80% POE case)**
 - Facts: Ship builder developing new dry dock and barge. Ship facilities they had never created before. Prototypes. Claimed the cost of building those as QREs (similar to facts in Trinity Industries)
 - Holdings:
 - Activities not qualified research, three rulings:
 - (1) Wages paid to ship builders who were constructing these items were not part of the POE. In applying 80% POE rule, Court said workers services did not factor into that equation because they were merely direct support (not part of qualified research activity) so you could not include those activities in the numerator of the fraction
 - Takeaway: Little Sandy focused on characterizing the ship builder's activities as direct support, not part of the POE
 - Think their activities can be framed differently, when you are building something new, you need to build it up, prototype it in order to test and evaluate it. Regulatory definition of POE: process of developing alternatives so it can be tested is part of POE. When you characterize their activities that way, clear that they are part of the fraction set forth in the regulations. And they were actually instrumental in that process



Alex Sadler



- Example in the 174 regs: experimental aircraft treated as experimental expense. Cost of building that aircraft was part of POE.
 - So relevant question shouldn't have been whether they were direct support, but rather, whether they could be considered part of POE
 - (2) Same activities of the shipbuilders could be included in the denominator, you would need a lot in the numerator to meet the 80%, made it impossible to meet that fraction requirement
 - Takeaway: this is legally suspect. When reviewing the substantially of language provided under Treas. Reg. Section 1.41-4(a)(6), it only looks to direct research activities versus direct support and supervision, so excluding them from numerator but bringing them into the denom is not justified as a matter of law.
 - Takeaway: You need to focus on activities that are part of the qualified research itself. Not the direct support or supervision. Resist effort by service to bring in direct support activities into the denominator which makes it more difficult to meet that test.
 - (3) Even if you strip away ship building activities and look at core engineering team, still failed 80%
 - Takeaway: that was just a proof failure. They did not provide the court with enough information to make that showing. So when developing your claims, need to be able to show that core researchers 80% of their activities were part of the experimental process. Once you do that, it opens up the door to bring in the other costs as direct support and supervision.
- **Harper v United States (detail needed for claiming credits on amended returns)**
 - Taxpayers filed amended returns claiming research credits after filing original returns. They attached 6765 listing QREs and computing the research credit. The Service audited the claim over several years, disallowed it. Filed a tax refund suit seeking the credit
 - DOJ (represents IRS in tax refund suits) argument - claims that taxpayers had filed with internal revenue service did not have sufficient specific factual specificity to meet requirement of giving service an opportunity to conduct a full and fair audit
 - District granted that, because attaching 6765 without factual detail was not enough
 - 9th Circuit reversed and it didn't address the taxpayer's sufficiency of the claim but found that because they audited the claim over several years, that waives the specificity requirement. 9th circuit found that by conducting a full and fair audit had waived that requirement so remanded



MASSIE Notes

- Takeaway:
 - Court did not address sufficiency of the claim. Possible if Service doesn't conduct an audit, question over whether the claim is sufficient. So more is better, include some narrative detail on the nature of the expenses with your administrative refund claim. This will inoculate your claim from being knocked down. Include some level of factual detail.
- **Leon Matts v Commissioner (this spring) (case on documentation)**
 - Facts: Garment maker whose clothes are in Nordstrom rack and other retail outlets. Taxpayer's purpose was to make beautiful clothing that women would want to buy. Taxpayer put on a full case over 4 days with fact witnesses testifying, expert witnesses, 4 IRS trial attorneys.
 - Holding: Judge issued a 50 page opinion basically rejecting the claim.
 - Taxpayer made a strong showing that garment making involved qualified research
 - Tax Court didn't buy it - activities weren't sufficiently uncertain, technical or experimental
 - Takeaways:
 - Hard case factually
 - Tax Court is taking increasingly narrow view of 174 requirement. Requiring investigative activities to develop a concept that is highly technical. Important to show those technical uncertainties.
 - Service devoted a lot of resources to challenging the taxpayers claim. When they perceive envelope is getting pushed too far, they will do that. So be prepared and invest time and resources to develop your case as much as possible.
- **District Court in Utah, Inter Mountain Electric v US (detail need for amended returns)**
 - Similar to Harper where taxpayer filed amended returns, attached 6765, IRS audited, disallowed, they filed suit, DOJ moved to dismiss on similar grounds
 - District Court again found that Service had waived specificity requirement by conducting full and fair audit but dismissed complaint for failure to state a claim and said taxpayer had not provided sufficient factual details but could refile their complaint with those details



- Takeaway:
 - More is better, to the extent you can include some factual content to nature of activity and expenses the more you can protect yourself
- **Premier Tech Inc, district court in Utah (detail needed for amended returns)**
 - Same set of circumstances as Inter Mountain Electric with a Form 6765, amended claim
 - DOJ argued that it was insufficient and the district court took a strong pro taxpayer line saying the service prescribed the 6765 as the form to make the claim, if it wants more info then it can change the form, but until that happens, then filing an amended return with the form 6765 is sufficient.
 - Interesting side story:
 - It went at some length to challenge the bona fides and integrity of the taxpayer and its advisory and legal firm. They had been known to file questionable claims. District Court said that is not relevant to the merits of the motion and advised DOJ to not do that again.
 - Takeaway:
 - Resorting to name calling usually is not that effective and runs the risk of drawing ire of decision maker, stick to the merits of your claim.
 - Judge did us all a favor.



Mega Millions Spotlight

Dan Mansfield
MASSIE R&D Tax Credits

- 3rd Installment in our four part series, looking at execution of the process this time in terms of how you gather the information necessary to support your credit claim
- To recap the prior two sessions, first Dan discussed the Year-End Review/Planning phase where you evaluate “How did I do? What could I do differently?” and the second session was on SME engagement in terms of the people side of the process
- Today is about Execution in terms of gathering the information (employee time and allocations as well as information to satisfy the four part test for cost centers, departments or projects), and the 4th Qtr Roundtable will be about the Wrap Up Process and how you bring everything together



Dan Mansfield



MASSIE Notes

- In terms of QREs, you have to look at what platform you have to use. Are you going to use web based, excel based, or some custom system?
- A Best-In-Class approach is to have your QREs tied back to your ERP systems: G/L, Payroll, Project Tracking, and Accounts Payable (invoice level details). If you do not use this approach it will likely not be answered or answered correctly
- Make sure to have a feedback loop with your SMEs so they can help revise your tools to make things better in the future. Make descriptions on your questionnaires relevant to the person or group. No one size fits all. Customize everything for the SME
- Make sure your tool and things you capture are going to help with future audits. Eliminate things from your questionnaires that are not helpful with audits.
- Questionnaires around cost centers or departments or projects: Do these annually at a minimum
- First figure if cost center qualifies, then distribute allocation employee questionnaires. Don't waste time on allocation questionnaires if the employees are not working on qualifying activities or business components.
- Make sure you train SMEs on your system in terms of what activities qualify



State Audits: Lessons Learned

Peter De Nicola
FUJIFILM

- Fujifilm operates in all 50 states, any given time have a number of ongoing audits. States that offer the R&D credit seems to be their focus these days. CA, TX and WI audit agents have spent most of the time on the R&D credit
- California -
 - Beginning in Jan 2020, field audit; when everything closed down, pivoted to handling the audit remotely. Kudos to CA they do embrace technology in terms of file sharing, corresponding by email, video conferences. Great contrast to the IRS where they're still using faxes and smoke signals.
 - Auditor focused on payroll-



Peter De Nicola



- Normally we gather expense information, run a summary report of payroll. In this case, auditor insisted on seeing the W-2s. Focused on whether or not the services were being performed in California in facilities in Santa Clara. There were some people working remotely from different states so those wages were disallowed.
- Data - more and more people working remotely. That's the new wave of doing business, especially for 2020 and 2021; those will get a lot of scrutiny.
- They (Fujifilm) are devising a new methodology to gather data in order to document where services were actually performed. We were able to come out relatively unscathed. But interesting thing on CA is that the auditors even though they focus on RD, they don't have a lot of experience in the area, most states don't have any specialists in the field to deal with issues that come up, most questions go back to HQ, goes through layers before someone makes a decision, then come back with additional questions or determinations a little challenging to deal with on that front.
- Texas-
- TX has challenged documentation, Fujifilm has about 80 projects ongoing at the moment
- Initially they wanted support for all 80 projects, tried to narrow that down, gave them information. People are hesitant to give info, tried to redact trade secrets, TX has been hanging tough in request though
- Wanted to have documentation that specifically supported there was a POE being followed
- At one point, auditor suggested we make an offer, willing to take a haircut to get it behind us, case manager agreed but it was rejected. No counter offer just rejected it.
- Feeling that he's getting is that they are hanging tough because there have been more claims for R&D credits that they budgeted, so they don't have the money, trying to knock some out.
- Wisconsin-
- Auditor is focusing in on contemporaneous documentation for each project, effort is on contemporaneous. Tried to fill gaps with R&D folk. She was not accepting it. Wants the documentation to be created at the time the work was performed. Also she's focusing on the fact that the documentation should highlight the scope of uncertainty at each stage of the R&D process
- Not sure of WI financial state, it has been difficult
- On all 3 audits, they are more difficult than dealing with the IRS. IRS in most cases assigns an engineer or R&D specialist to examine, have a better sense of what R&D is and what we are trying to accomplish, much easier to deal with.



MASSIE Notes



Keys to a Successful R&D Project

Chris DeRosa
ABIOMED



Chris DeRosa

- Chris was a CPA provider for ABIOMED and in June of 2020 he joined ABIOMED
- Chris valued MASSIE's kick off process for ABIOMED's R&D project
- The kick-off process gave Chris the opportunity to introduce himself to others at ABIOMED since being virtual due to COVID
- The kick off process was crucial to show the value that each participant was bringing to the process
- Chris fostered relationships with SMEs by leveraging his relationships within the tax and finance professionals at ABIOMED - it was crucial to reach these SMEs because they provided the most valuable information
- The MASSIE one-touch tool was sent to SMEs at ABIOMED to collect information - this tool is crucial but the people (the MASSIE professionals) behind it were key to the process
- Chris said the MASSIE team was easy to communicate with - they were always reachable by phone to ask questions
- Chris said that having multiple kick off meetings as opposed to one kick off meeting was one lesson he learned where he could improve compliance percentage. He believes that a series of meetings might capture a greater audience and participation at ABIOMED.
- The MASSIE team was very knowledgeable about their industry, and it gave Chris and the CFO confidence in what MASSIE was able to produce





Upcoming R&D Best Practice Roundtable & Newsletter Information



presented by  MASSIE

Wednesday, December 8th at 3pm ET

Complimentary | 1 CPE Credit

Register: massietaxcredits.com/roundtable



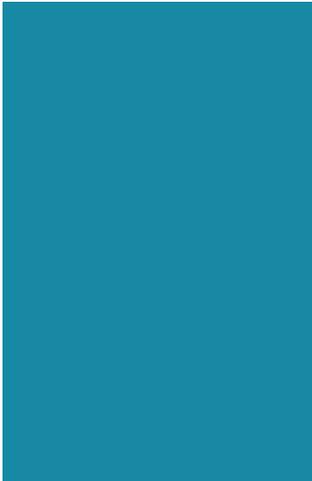
presented by  MASSIE

Upcoming Issues: October & November

2-3 R&D Hot Topics Per Month

Opt In: <http://eepurl.com/hD7g9D>





678.807.7228

info@massietaxcredits.com

massietaxcredits.com

