

ROUNDTABLE WHITE PAPER

WEDNESDAY, DECEMBER 8TH, 2021 | 3:00-4:00PM ET

Q4 ROUNDTABLE
DECEMBER 2021

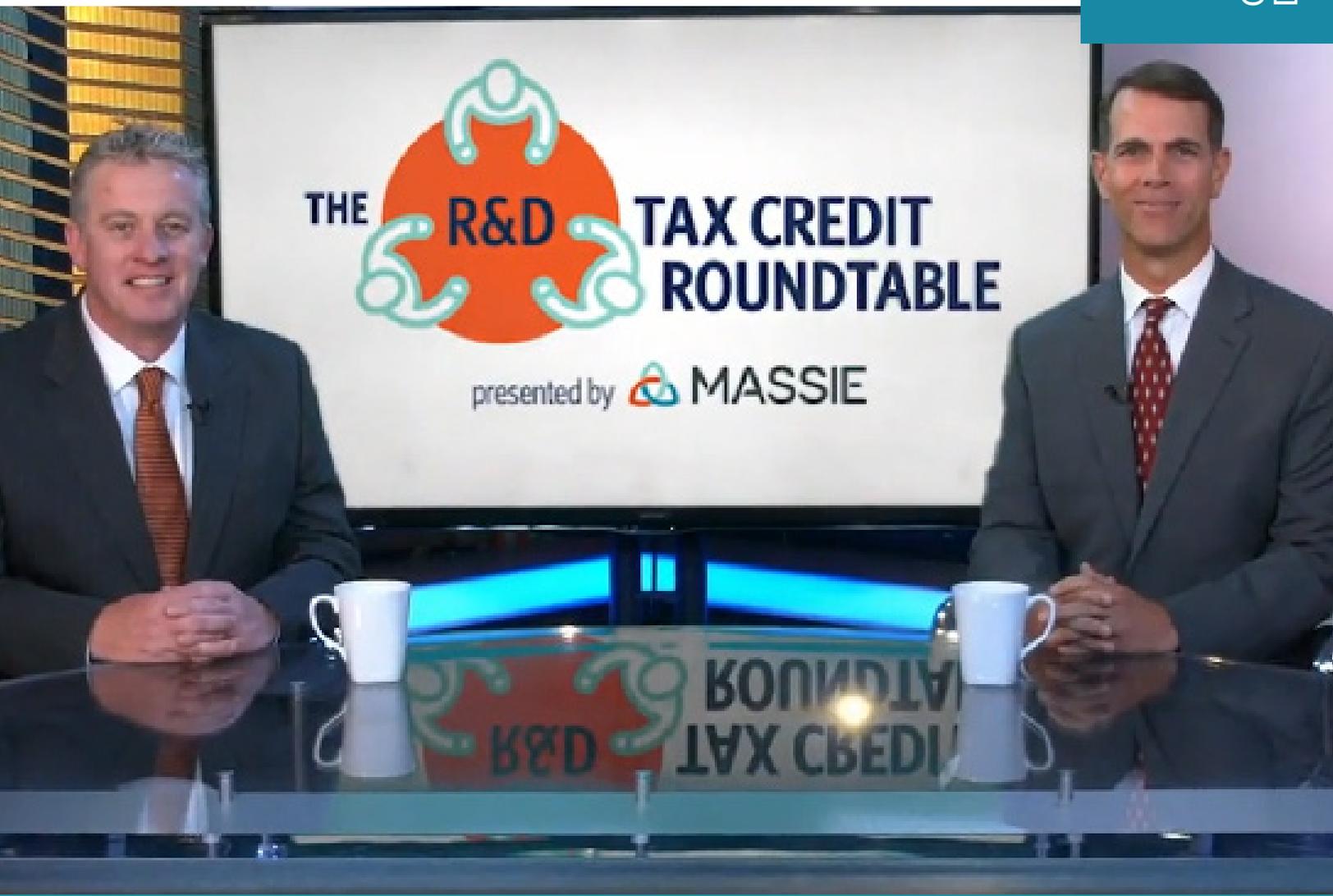
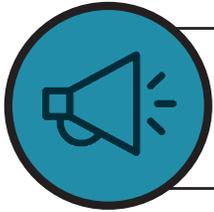


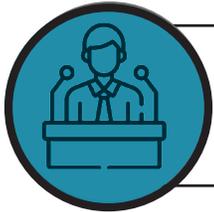
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Jason Massie and Peter Green, MASSIE R&D Tax Credits

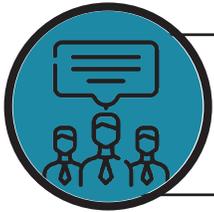
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Washington, DC Update on the Latest Cases, and IRS Pronouncements

Matt Lerner, Sidley Austin

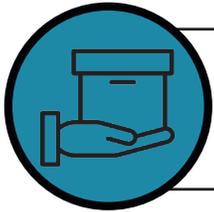
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Mega Millions Spotlight

Dan Mansfield, MASSIE R&D Tax Credits

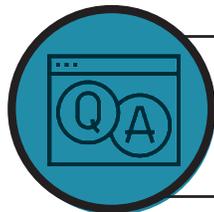
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Using SharePoint and Teams for R&D Studies

Michael Keller, Dow and Colette Gagnet, MASSIE R&D Tax Credits

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Upcoming R&D Best Practice Roundtable

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Companies Who Attended

Abiomed
Accenture
Acxiom + IPG
Adobe
AGS Automotive Systems
AMD
Anika Therapeutics
Applied Medical Corporation
Armstrong World Industries
Autodesk
Avnet
Bottomline Technologies
Bright Health Group
C Spire
Callaway Golf Company
Cambia Health Solutions
Cambro Manufacturing Company
Caterpillar
CDK Global
Clark Equipment Company
Coca-Cola
CommScope
Cracker Barrel Old Country Store
Cummins
Curtis instruments
Deere & Co
Dell Technologies
Deluxe Corporation
Eastman
Eat'n Park Hospitality Group
Eli Lilly and Company
Encompass Health Corporation
EOG Resources
Equinix
Fedex Corporation
Gap
GDIT
General Dynamics Mission System
Harley-Davidson
HDR
Hella Corporate Center USA
Hewlett Packard Enterprise Company
High Company
Horizon Therapeutics USA
Ingevity Corporation
Ingram Micro
Intermedia
ITW

Johnson Outdoors
Kimberly-Clark Corporation
Konecranes
Land O' Lakes
Leonardo DRS
Lincoln Electric
Lockheed Martin Corporation
Masco Corporation
McCormick & Company
Milliken
Mobilityworks
Monster.com
MPW Industrial Services
Neenah
Nestle USA
Oshkosh Corporation
PRGX Global
Principal Financial Group
Quadient
Quaker Chemical
Resideo
Resideo Technologies
S. C. Johnson & Son
Safelite Fulfillment
Safelite Group
Shell Oil Company
Siemens Corporation
Sitecore Ireland
Smith Drug
Smiths PLC
Stanley Black&Decker
Starkey
State Farm
SWM
Texas Instruments
Texo Properties
Thinq Technologies
Tolko Industries
Unilever
United Launch Alliance
UnitedHealth
University of Phoenix
US Vision
Vertex Pharmaceuticals
Watlow
Weir Group
Woodbridge Foam Corporation
Yanfeng
Zoom Video Communications



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



Washington, DC Update on the Latest Cases, and IRS Pronouncements

Matt Lerner, Sidley Austin

- **Little Sandy Coal Co., Inc. v. Comm'r, TC Memo 2021-15**
 - Facts: Little Sandy Coal Co., Inc. claimed the research credit with respect to the expenses incurred in the development of eleven vessels by its subsidiary, Corn Island Shipyard, Inc.
 - Ruling: On February 11, 2021, Judge Halpern issued a memorandum opinion in Little Sandy Coal Co., Inc. v. Comm'r, TC Memo 2021-15, addressing key questions about the application of the substantially all test of section 41.
 - Little Sandy Coal Co., Inc. has filed a notice of appeal with the 7th Circuit.
 - Observation: This opinion was issued as a Tax Court Memorandum decision.
 - Tax Court Memorandum decisions are not binding. *Huffman v. Comm'r*, 126 T.C. 322, 350 (2005).
 - Takeaway: A case where the facts were so undeveloped that even the witnesses had a difficult time describing the research they were directly supporting should have little impact on a taxpayer with contemporaneous records and available proof.



Matt Lerner



- Observation: The decision to exclude the direct support and supervision wages from the numerator, but potentially not the denominator, of the substantially all fraction is novel and runs counter to the more reasonable interpretation of that test.
 - The language of the regulation does not support that interpretation. The term research activities as used in Treas. Reg. section 1.41-4(a)(6) is broad enough to include both activities described in clauses (i) [engaging in qualified research] and (ii) [engaging in the direct supervision or direct support of research activities which constitute qualified research] of IRC section 41(b)(2)(B).
 - The judge seemed concerned that the taxpayer had very little evidence that supports the highly qualified activity of senior employees as well as the Taxpayer's focus on production activities.
 - The judge might have reached a different conclusion if the support activities were tied more closely to the court's perception of research – participating in white board sessions or helping a software engineer with her code – or if the taxpayer showed specific, credible uncertainties that a pilot model had to address.
- Takeaway: Significant effort should be made to link claimed support and supervisory activities more directly to the research.
- Observation: The judge, in reacting to the sparse factual record before him, wanted to apply the shrink-back rule of Treas. Reg. section 1.41-4(b)(2) so that the taxpayer could receive some credit, but the taxpayer provided no evidence to allow the court to do so.
 - The judge seemed concerned with the taxpayer's absence of any effort to meet what he viewed as clear, quantitative tests.
- Takeaway: It is great to identify your business components, but taxpayers need to be able to link qualified activities and related cost specifically to the process of experimentation.
- Observation: The Little Sandy Coal opinion conflicts with Trinity Indus., Inc. v. United States, 757 F.3d 400 (5th Cir. 2014). Trinity Indus. has been cited favorably by numerous courts, including the Tax Court.
- Takeaway: A litigant could select a forum that would likely be more deferential to a Circuit Court opinion than a Tax Court Memorandum opinion.



MASSIE Notes

- **LAFAs 20212501F**

- Ruling: The LAFAs determine that analysis of the 4-part test does not change if a taxpayer or the IRS “uses a statistical sample under Rev. Proc. 2011-42 to substantiate a research credit claim.”
- Observations:
 - Does not criticize sampling or suggest it is less reliable than evaluating the entire population.
 - Does not indicate that even after sampling one must apply the 4-part test to every business component in the population, as opposed to just those covered by the sample.
 - Some exam teams are reading the LAFAs more aggressively and saying it makes the 4-part test more difficult to meet or that you have to identify all business components.
- Takeaway: For each unit in the sample, one must rigorously apply the 4-part test.

- **The October 15, 2021 CCM**

- Ruling: To be valid, a claim must provide substantially greater specificity than that required by Form 6765:
 - Identify all the business components to which IRC section 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.
- It directs agents not even to begin auditing a claim that lacks these specifics, in part because if they do start the review process, their efforts to audit may be viewed as waiving their objections to the claim.



- Observation: These purported requirements for a refund claim are inconsistent with recent judicial decisions. See e.g. Premier Tech, Inc. v. United States, Case No. 2:20-CV-890-TS-CMR, 2021 WL 2982064 (D. Utah, July 15, 2021).
- Take away: While inconsistent with recent judicial decisions, it would be wise for taxpayers to make a best effort to comply.
- Observation: The IRS believes Little Sandy Coal is important and the IRS should follow.
- Take away: Expect that the IRS will be more demanding of proof of business components and quantitative analysis to support the substantially all test, as well as, try to limit employees that qualify (i.e., support and supervision).
- Audit Trends
 - Observation:
 - The General Business Credit Practice Network and many exam teams seem to be growing increasingly hostile to research credit claims. Particularly refund claims.
 - Exam teams are asking questions clearly derived from Little Sandy Coal.
 - Takeaway: Qualitative and Quantitative information is crucial!
 - Must be put together in a comprehensive, complete, careful package.
 - Be able to show how you meet the 80% test.
 - If you are not able to meet the 80% test, be able to show how you applied the shrink back rule.



Mega Millions Spotlight

Dan Mansfield, MASSIE R&D Tax Credits

- Fourth and final installment of our four-part series, focusing on extracting the data and performing the calculations.
 - To recap the prior sessions:
 1. Year End Review/Planning – How did I do? What do I need to do differently?
 2. SME Engagement – The People Side
 3. Execution – Gathering the Information



Dan Mansfield



MASSIE Notes

- Best Practices
 - Extracting the Data
 - Analyze data throughout the year, if possible. This allows you to be able to ask questions while development team is still fresh with details.
 - Right size your data set ... don't get overloaded! Consider starting with a smaller pool (i.e., certain general ledger accounts or types of projects) and build on as you can.
 - Marrying data with qualification process
 - The IRS is more comfortable with project surveys.
 - Calculations
 - Having one platform for both your survey and calculation engine avoids issues with data hand-off.
 - Integrate calculations that rely on the same data (Federal section 41, Federal section 174, State QREs, government mandated R&D, etc.)
 - Sync up qualified status with base amounts.
 - Wrap-up
 - Output should be summarized in a format that is easy for your review (i.e, file or table).
 - Provide feedback to business units. This helps improve SME engagement in the project.
 - Compare to provision and prior year analysis. Does the current year make sense?
 - Think about future needs (i.e, audits). The key is accessibility to the underlying detail.





Using SharePoint and Teams for R&D Studies

Michael Keller, Dow and Colette Gagnet, MASSIE R&D Tax Credits

- Dow is excited to roll-out SharePoint to assist in data accumulation and project tracking related to the research credit. Key areas of use include:
 - Ability to provide survey up front to assist in identifying people in the business (outside of R&D) that may have qualified research.
 - Ability to identify projects that potentially qualify and send survey templates to be completed.
 - Surveys and Contemporaneous Documentation able to be stored within system.
 - Goal is that surveys can be completed real time.
 - Ability to track progress of surveys completed and send out reminders where needed.
- MASSIE is using tools like SharePoint and Teams to break down access barriers. These tools provide a more collaborative, safe environment.
 - Personalized chat streams with SMEs.
 - Direct, secure links to upload and share data.
 - Ability to set-up security protocols.
- Make sure you have user acceptance as you roll new tools out and be ready to adjust year-over-year.



Michael Keller



Colette Gagnet



Upcoming R&D Best Practice Roundtable



Wednesday, February 23rd at 3pm ET

Complimentary | 1 CPE Credit

Register: massietaxcredits.com/roundtable





678.807.7228

info@massietaxcredits.com

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