

ROUNDTABLE WHITE PAPER

THURSDAY, SEPTEMBER 22ND, 2022 | 1 - 2 PM ET

Q3 ROUNDTABLE
SEPTEMBER 2022

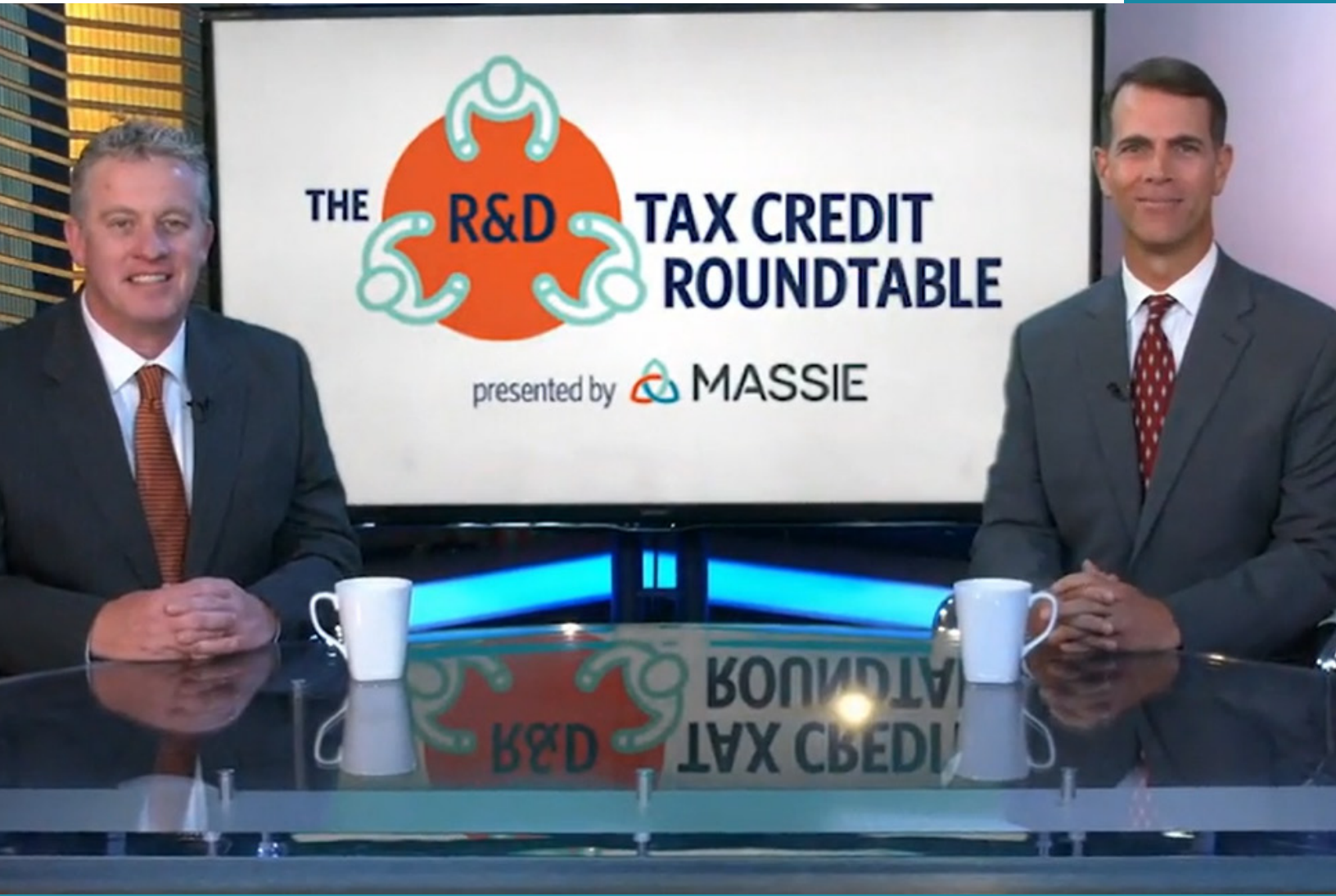
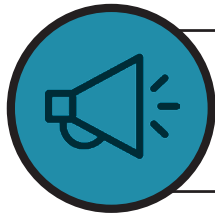


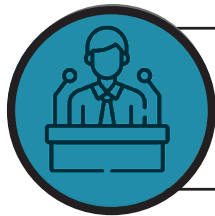
Table of Contents



Introductions and Announcements

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

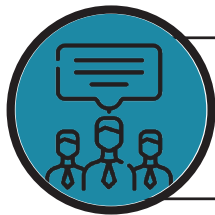
page 4



Washington DC Update

Jeffrey Moeller, *Ivins, Phillips, Barker*

page 4-5



Speaker Spotlight

Dale Green, *PACCAR*

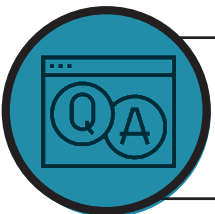
page 6



IRS Demands and Technology Tools

John Hoang and Jason Massie, *MASSIE R&D Tax Credits*

page 7



Upcoming R&D Best Practice Roundtable

page 8



Companies Who Attended

10x Genomics, Inc.
Advisor360, LLC
Alexion Pharmaceuticals Inc
Allegion
Amazon
American Financial Group
Andersen Corporation
Applied Medical
Arlo Technologies Inc
Aviagen
Ball Corporation
Bombardier Inc.
Bottomline Technologies
Cargill
Caterpillar, Inc.
Centrus Energy Corp.
CGI federal
Charter Communications
Corteva
Corvel Corporation
Cushman & Wakefield
Deere & Co
Deluxe Corporation
Dominion Energy Inc.
DUCOMMUN INCORPORATED
Emergent
ESCO technologies inc
Exyte Americas Holding, Inc.
First Group America
Fresenius Kabi USA
Genentech
Glidewell Labs
Granite Telecommunications, LLC
Green Plains Inc.
Gulfstream Aerospace Corporation
Informatica LLC
Interpublic
Karcher
Kimberly-Clark Corporation
Leggett & Platt, Inc.
Lhoist
LightBox
LMC
LSC Communications
MACOM Technology
Magna International Inc.
Martin Marietta
Match Group
Mativ Inc
Maxar Technologies
Micron Technology, Inc.
Midmark Corporation
Move Sales, Inc.
MSCI
NewMarket Corporation/Afton Chemical
-Corporation
Novocure Inc.
Oracle
Oshkosh Corporation
OSI Group
Owens & Minor
Oxford Industries
Plexus Corp
Plexus Worldwide LLC
Principal Financial Group
Randstad
Raven Industries
Realtor.com
Redesign Health Inc.
Reiter Affiliated Companies & Reiter
-Family Office
ResMed
SADA Systems Inc.
Saft America, Inc
SM Energy
Smart Modular Technologies, Inc.
SnapMedTech, Inc.
Starkey Laboratories Inc
The Andersons Inc
The Dow Chemical Company
The Hartford
The Wonderful Company
Toast, Inc.
Two Sigma Investments, LP
ULA
Union Pacific Railroad
Unitedhealth
University of Phoenix
Veritas Technologies LLC
Viasat, Inc.
Warner Brothers - Discovery
Zebra Technologies Corporation



MASSIE Notes



Introductions and Announcements

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



Jason Massie



Peter Green

- MASSIE recently presented as a Platinum Level sponsor at the 2022 TEI Audits and Appeals conference in DC. Multiple IRS employees were in attendance. We highly recommend you attend this conference in the future and hope to see you at the upcoming Annual Conference in October in Scottsdale, AZ.
- New legislation, the CHIPS and Science Act, came out on August 9, 2022. It's a 25% credit for people who invest in chip technology and manufacturing in the US. August 9, 2022 is the effective date, so you should be tracking these investments now for the credit.
- If you would like Peter and Jason to speak to your TEI group, please reach out to Ilona at ilyubashevsky@massietaxcredits.com.



Washington DC Update Contractor Costs: Considerations Regarding Lump Sum Payments

Jeffrey Moeller, *Ivins, Phillips, Barker*



Jeffrey Moeller

- The IRS does not generally consider lump sum (“upfront” or “milestone”) payments such as collaboration agreements, research agreements, license agreements, or joint-venture arrangements as qualified expenditures for the research credit. However, you can conduct some economic analysis to properly qualify some of these expenses.
- The key first step is determining what type of IP (product IP or technique IP) makes the research efforts valuable.
- In a simplified economic risk scenario where the IP is strictly product IP and the researcher has no proprietary techniques, the payor is not at risk for any of the upfront or milestone payments. If the researcher and payor have agreed to terms where the upfront payment is due prior to development and the milestone payments are due contingent upon the success of the prior development phase, then each payment is economically allocable to the previous research stage and is ultimately a payment for IP rather than research.



- In a simplified economic risk scenario where the IP is strictly technique IP and the researcher has only expertise and no nascent product IP, the upfront payment is unrelated to the technique IP because the payor does not purchase any rights to the technique IP. In this scenario, the payor is at risk for the upfront and midterm payments because they pay even if the research is unsuccessful. Under the same terms mentioned in the product IP example, the payments are economically allocable to the subsequent research rather than the IP.
- Contracts are rarely simple, and many mixed scenarios can apply. Examples requiring further analysis include scenarios with both product IP and technique IP, when an upfront payment is greater in value than the IP, cases with multiple midterm payments, cases involving licenses, and when IP is a proprietary database or materials library.
- Ideally, a valuation would be an accurate way to get the allocation right, but it's expensive and speculative. Instead, make sure you have ample contemporaneous documentation to defend an audit (the business case for the transaction is helpful).
- Contractual language is another major consideration in defending your claim. The boilerplate language used in most transactions implies that the lump sum payments are for previous, successful research. This language is difficult to challenge, as seen in the 2007 Biotech Coord Issue, where the IRS found that none of the payments qualified for the research credit. So, make sure you are using contractual language to properly reflect the economics of the transaction.
- Instead of using boilerplate language like "upfront" and "milestone," use language like "in consideration of [Researcher's] obligation to conduct [subsequent research stage]."
- Pay particular attention to language around the final payment, as this will sometimes require a revision or supplement to the agreement based on the success or failure of a project.
- Reach out to your colleagues in the contracting and licensing departments to work with them on the contractual language of these agreements early on in the process.
- To learn more about the ambiguities of this process or if you have follow-up questions, you may contact **Jeff at JMoeller@ipbtax.com**.



MASSIE Notes



Spotlight Speaker

Dale Green, *PACCAR*

- Over the years, PACCAR has had several evolutions of bringing their R&D tax credit computation in-house, outsourcing it, and bringing it back in-house. The credit eroded when it was brought in-house but not managed closely by the tax team. Since then, we've brought the process in-house again, this time with the tax team highly involved as R&D experts. Over the last several years, we have increased our credit from \$3M to \$30M.
- We send 2 teams of 2 tax staff out to interview the engineering teams. By partnering with engineers outside of just interviews for the credit, we build the culture around gathering R&D information. For example, we helped a division document a six-sigma project, which resulted in them winning a prestigious internal award that earned the team cash bonuses.
- We use Alteryx for the calculation, SharePoint for surveys, and Snowflake as a database and audit trail tool.
- We successfully defended our credit under IRS audit using this process.
- This process gets us a better credit without using the Directive.
- Extreme examples can help conservative engineers see that almost everything they do qualifies. For example, the time a truck driver spends at the test center driving around doing rapid mile accumulation to test various components on the truck shows direct support, so it qualifies. These examples help open everyone's mind as to what qualifies and what doesn't.
- Lessons learned: spend time building relationships with your engineers, smooth out the calculation process so you can spend your time on the subjective analysis, and make the process easy and flexible for your engineers. Help them help you!



Dale Green





IRS Demands and Technology Best Practices

John Hoang and Jason Massie, *MASSIE R&D Tax Credits*

- Due to the proposed upcoming changes by the IRS to form 6765; you will be required to gather more information than ever before detailing activities of your SMEs.
- The SME outreach phase and gathering of information is perhaps the most tedious and administratively burdensome part of an R&D study.
- At MASSIE we have developed a customized “SME Centric” approach, which combines the use of smart tools and best people processes in order to eliminate some of the admin and automate those tasks.
- Many people only think of MS Teams as another video conference tool, however MS Teams was in fact designed to be a very effective “Collaboration Hub” for projects such as the R&D Tax Credit.
- MS Teams provides a “one stop shop” where companies can manage their R&D studies within their environment, without the need to buy additional software. There’s no need to create logins or worry about security. The platform is backed by Microsoft enterprise-level security and compliance.
- There are over 700 apps and custom features already developed that can be leveraged. With the right design and best practices, companies can streamline an R&D study using automation tools, dashboarding analytics, and AI document reviews.
- Collaborations can be done in the cloud, which means collaborators have access from anywhere using the Teams app on mobile devices. This is especially helpful for SMEs who are not always in front of their computers because they are working in factories or labs.
- MASSIE has been helping Fortune 500 and other companies set up the ideal MS Teams site so that you can better collaborate with your SMEs. Contact us to go through our Teams Best Practices or to talk further about your situation.



John Hoang



Jason Massie





Upcoming R&D Best Practice Roundtable



Thursday, December 7th at 1 PM EST

Complimentary | 1 CPE Credit

Register: massietaxcredits.com/roundtable



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