

**ROUNDTABLE**  
**WHITE PAPER**

WEDNESDAY, JUNE 21, 2023 | 3 - 4 PM EST

BECAUSE  
TODAY IS  
DIFFERENT



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## Upcoming R&D Tax Credit Best Practice Roundtable

Thursday, September 28, 2023 | 3 PM EST

# Companies THAT ATTENDED

Alexion  
AMD  
Andersen Corporation  
ANGUS Chemical Company  
Arch MI  
Aveanna Healthcare  
BASF Corporation  
Big Lots  
Biohaven  
BioMerieux, Inc.  
Bioventus  
Bridgestone Americas Inc.  
Brunswick  
BTS Tax Solutions  
Cambium Learning Group, Inc.  
Cambrex Corporation  
Cargill  
Carvana  
Caterpillar Inc  
Centrus Energy Corp.  
Charter Communications  
CommScope  
Corteva  
Cummins Inc  
Curtiss-Wright  
Daimler Truck North America LLC  
Daktronics, Inc.  
Deckers Outdoor Corporation  
Deere & Co  
Disney  
Dotdash Meredith  
Doximity

EDF Renewables  
Elektro  
Envision Healthcare  
Express, Inc.  
FedEx Corporation  
Fresenius Kabi USA, LLC  
Freudenberg North America  
Gap Inc  
GE Appliances  
Glidewell Laboratories  
Green Plains Inc  
Green Thumb Industries  
GTI  
Gulfstream Aerospace Corporation  
Harley-Davidson  
Headway Technologies Inc.  
HubSpot  
Hunter Douglas  
Huntington Ingalls Industries, Inc.  
Insmed  
Integra LifeSciences  
IPG Photonics Corporation  
Johnson Outdoors  
Kemira  
KLR  
Knowles Corporation  
Kymera International  
Lhoist  
Lockheed Martin Corporation  
Lowe's Companies, Inc.  
MACOM Technology  
Macys

Magic Leap  
Materion Corporation  
MathWorks  
Medidata Solutions, Inc.  
Midmark Corporation  
Milliken  
Monster.com  
MPW Industrial Services, Inc.  
Musco  
Navistar Inc  
Nestle USA  
Nexteer Automotive  
NextGen Healthcare  
Norfolk Southern Corporation  
Northrop Grumman  
O.C. Tanner  
Occidental Petroleum Corporation  
Old Dominion Freight Line, Inc.  
Optiver  
Oshkosh Corporation  
Performance Food Group  
Plexus Corp  
Printronic  
PSCU Incorporated  
PulteGroup  
Quadient, Inc.  
Randstad  
Reiter Affiliated Companies  
Rocket Software, Inc.  
Roivant  
Safelite Group, Inc.  
Saft America

SAP  
Sealed Air Corporation  
Shamrock Foods Corporation  
Siemens Corporation  
Sitecore USA  
SM Energy Company  
Snap-on Incorporated  
Snyk, Inc  
Stanley Black & Decker, Inc.  
Stripe, Inc  
Sun Life Financial  
Suntory International Corp  
Taylor Morrison  
TDS, Inc.  
TEL  
The Suddath Companies  
The Toro Company  
TPI Composites, Inc.  
Transcore LP  
Traverse Therapeutics  
Trinity Industries  
ULA  
UnitedHealth  
UPS  
Verint Systems Inc.  
Verizon Communications Inc.  
VF Corporation  
Visa  
Vista Outdoor  
Vonage America  
West Pharmaceutical Services Inc  
Zapier  
ZOLL Medical Corporation





## Introductions and Announcements

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

- Welcome to the second Roundtable of the 2023.
- We learned that the Audits and Appeals Conference is now in February 2024. We are excited for the TEI Annual Conference in New York in October. Let us know if you're going!
- In early March, MASSIE hosted a 4-hour long virtual session for TEI Portland, our "Roundtable on the Road."
- During the months of May & June, MASSIE traveled to Huntington Beach, CA (Region 10), Bellevue, WA (Region 9), and most recently to Hilton Head, SC (Region 8) as sponsors and speakers.
- If you would like Peter and Jason to speak to your TEI group, please contact Ilona at [ilyubashevsky@massietaxcredits.com](mailto:ilyubashevsky@massietaxcredits.com).

## Washington D.C. Updates

### Matt Lerner, Sidley Austin

As previously discussed, many research credit audits have become contentious and adversarial.

Exam Teams and their specialists seek a way to justify an adjustment rather than develop the facts and reach the correct outcome. The changed focus manifests itself in several different ways. It is crucial to be prepared and plan the proper approach.

Not all Exam Teams are adopting this approach, though. Many excellent teams approach examinations conscientiously and work with taxpayers to develop the record. These audits foster carefully developed facts and genuine dialogues with taxpayers. The first goal should be to forge a friendly, trusting, and cooperative relationship with an Exam Team. Showing a cooperative willingness to provide information will ultimately result in a reasonable audit plan.



If taxpayers hit the ground running with hostility or skepticism, IRS agents will respond accordingly. Not only does this put your audit at risk from a relational standpoint, it also indicates suspicion.

The following describe some reasons audits may be less productive or more contentious:

1) IRS engineers are extremely overworked and have a strong incentive to get rid of cases quickly. Agents are looking for silver bullets—more specifically, ways they can feel comfortable disallowing substantial portions of claims without expending a ton of effort. This leads some of them to try to find easy, high-level ways to disallow credits.

2) They might challenge the legitimacy of a taxpayer's sample plan on technical and often specious grounds or even argue that a sampling is impermissible. Though a taxpayer may have a highly qualified sampling firm do the work and comply with Rev. Proc. 2011-42, the IRS will still be looking for footfalls to disregard samples, asserting that survey questions are unclear and do not support the conclusions reached.

The IRS is also demanding to see proof that the Process of Experimentation ("POE") test was applied quantitatively to each business component for which credits were claimed (even if one used a stat sample). Exam Teams want to see proof that the POE's 80% determination was calculated for every business component.

In another search for a silver bullet, the IRS is requiring the "substantially all" fraction of the POE test to exclude support and supervision from the numerator, even after the Seventh Circuit rejected that approach. Regarding the Little Sandy Coal case, while it didn't reverse tax court on ultimate finding, it did indicate that tax court's conclusion that support and supervision can't be elements of POE is wrong.

Many engineers are also misapplying the burden of proof. They assert, correctly, that the taxpayer has the burden, but then, contend, incorrectly, that the taxpayer must come forward voluntarily with all information that supports every aspect of its credit claim. Thus, they may ask one broad question and then quickly move to issuing an Acknowledgement of Facts ("AOF") IDR, asserting that the taxpayer has not provided evidence to support its claim.

The IRS asserts that the AOF is the taxpayer's opportunity to produce everything on which it might wish to rely. Indeed, senior IRS engineering personnel have asserted that a taxpayer should be able to "press a button" and produce everything that supports its claim at the time a return is filed. Where the taxpayer cannot do so, its claim is disallowed.

When a taxpayer provides substantial documentation, the Exam Team frequently complains the documentation is too voluminous and not possible to review. Exam Teams often ask for roadmaps directing them to the key sections and pages even if the entire document is relevant. They have also rejected the relevance of engineering documents because they are not set up to address each part of the 4-Part Test specifically.

*Exam Teams are turning down offers to interview SMEs or visit sites. There is a growing sense that interviews might not be helpful in disallowing; rather, they tend to substantiate the credit. To avoid these unfortunate scenarios, taxpayers must make every effort possible to ensure they have data that allows them to apply the POE test at its full strength.*

Tips:

1. Gather as much information as possible through surveys at the time of preparing the claim because that is when it is most readily available.
2. Structure the survey to provide information that can be used to perform the expected computation.
3. Use sampling on a business component basis (the IRS has “made noises” about rejecting employee-based samples)
4. Be sure the sampling plan satisfies Rev. Proc. 2011-42 and, if under audit, try to get the IRS to sign off on the plan
5. Document actual computation of the POE fraction and provide support for how you arrived at the percentage. Include pictures, site walk throughs, and other relatable documentation. What’s more, make sure to get these things before any SMEs leave the company.
6. Structure surveys to provide computation on business component by business component basis.
7. If you are currently under audit, consider allowing the Exam Team to weigh in on your survey process and questions for future years.
8. Develop the facts yourself and fill the record with supporting documentation so that even if your Exam Team will not consider it, the information is available at appeals.
9. If the IRS won't conduct interviews or site visits, provide narrative project overviews with the documents and guides to the key pages/sections. Don't push back on the relevance of the Four-Part Test but how the IRS is approaching it.
10. If the IRS will not conduct interviews and you believe the SMEs can help fill in key gaps, provide presentations or witness statements. Document each instance where the Exam Team has turned down opportunities to develop the facts.





# Spotlight Speaker

Shreya Mehta, Verizon Communications

A discussion on Clarity, an end-to-end job tracking Software for complete transparency and control over production processes.

Verizon before full implementation of Clarity:

Early on, Mehta and her team tracked projects rather than utilize time reporting. They used Clarity to manage the budget, but it was difficult to garner participation for tracking projects for the purpose of the R&D tax credit. Another challenge the team faced was SME designation. Logic says that the personnel with the most time charged to a particular project would be the best SME to interview, but this was not always the case. Mehta saw non-value work added to this process just to identify the optimal SMEs.

After implementing Clarity:

Now that 2000+ projects reside in Clarity, Verizon has streamlined its R&D tax credit process. Mehta and her team now issue upwards of 1,000 surveys to flag viable SMEs. They are able to weed out poor candidates from the very start and download only the information from probable engineers with qualifying activity.

MASSIE has also worked with taxpayers who have Clarity. We have been able to embed surveys into Clarity, add fields for SMEs, and transform the way taxpayers use Clarity for the credit.



# Southern Jobs Tax Credits

Tanja Kurtz, Practice Leader



Peter Green was delighted to announce that MASSIE has formed a new subsidiary company called Southern Jobs Tax Credits, led by Tanja Kurtz. She has over a dozen years of experience dealing with state tax credits, and is recognized as an expert in southeastern state credits.

Southern Jobs Tax Credits specializes in lucrative tax credits for businesses in Georgia, Mississippi, and South Carolina. Our expertise is focused where it benefits our clients the most, according to Tanja.

While Jobs Tax Credits may seem straightforward, there are many intricacies involved. By trusting industry experts like us, you can confidently claim and sustain the maximum credits available. We have built a long-standing tradition of excellence. Our team of experts is dedicated to providing a best practice experience for our clients. We hold ourselves to high standards in serving both our clients and our people. All of our clients must love us, and all of our employees must love their jobs.

**FOR MORE INFORMATION:**



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# Section 174 Updates

Paige Riordon, MASSIE R&D Tax Credits

For tax years beginning after December 31, 2021, taxpayers are required to capitalize and amortize all research and experimental (R&E) expenditures.

- Five-year amortization period for U.S.-based research, beginning with the midpoint of the tax year in which the expenditure is paid or incurred (i.e., recovery is spread over 6 taxable years. Expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense.
- There is a 15-year amortization period for foreign-based research (i.e., recovery is spread over 16 taxable years).
- Software development costs are governed by new mandatory rule.
- No deduction is allowed upon disposition, retirement, or abandonment.

Treas. Reg. Section 1.174-2(a) defines R&E expenditures as:

- Expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense.
- The term generally includes all such costs incident to the development or improvement of a product.
- Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product.

Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the product or the appropriate design of the product.

### Can I just use Section 41 QREs or Book R&D as my Section 174 amount?

#### Financial Reporting

- Discovery of new knowledge and translation of research findings into a plan or design

#### Section 174 costs

- Eliminate uncertainty

#### Section 41 R&E costs

- Subset of Sec. 174 R&E costs
  - Must relate to new or improved business component
  - Technological in nature
  - Eliminate uncertainty
  - Process of experimentation
  - Conducted within the U.S., Puerto Rico

### What are “incidental” costs? How broadly can you define them? How do I quantify and allocate them to Section 174?

#### Incident to:

- Employee benefits (e.g., self-insured medical, payroll taxes)
- Overhead (e.g., utilities, building depreciation, building rent)
- Patent and regulatory costs incident to product development
- Stock-based compensation

#### Not incident to:

- G&A
- Business operations/maintenance

### Is it necessary to file a change in method of accounting?

- Rev. Proc. 2023 – 11, modifies and supersedes Rev. Proc. 2023-8
- Automatic accounting method on a cut-off basis. (No Section 481(a) adjustment)
- Form 3115 is not required for the first taxable year beginning after December 31, 2021.
- Statement should include:
  - Name and employer ID/SSN of the applicant,
  - Beginning and ending dates of the first taxable year in which the change takes effect,
  - Designated accounting method change number (265),
  - A description of the type of expenditures included in the change as specified R&E expenditures,
  - The amount of R&E expenditures paid or incurred by the applicant during the year of change, and
  - A declaration that the applicant is changing the method of accounting on a cut-off basis and adhering to the amortization requirements.

Taxpayers waiting to change Section 174 amortization until a subsequent year (i.e., 2023), must file Form 3115 using the automatic consent procedures.





presented by  MASSIE

**Mark your calendars for  
our next Roundtable on:**

**September 28, 2023  
3 PM EST**