



ROUNDTABLE WHITE PAPER

THURSDAY, SEPTEMBER 28, 2023 | 3 - 4 PM ET

BECAUSE
TODAY IS
DIFFERENT



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Upcoming R&D Tax Credit Best Practice Roundtable

Thursday, December 14, 2023 | 3 PM ET

Companies THAT ATTENDED

10X GENOMICS, INC.
Aalberts
Acxiom+IPG
Advancion Corporation
Advisor360
AGCO Corporation
Ahold Delhaize
Albertsons
Allied Motion
Alorica
Amcor
AMD
Ameren
American Express
Andersen Corporation
Apotex
Armstrong World Industries
ASML
AstenJohnson Inc
AstraZeneca
Aveanna
Aviagen
BAE Systems
BASF Corporation
Bazarvoice
BeyondTrust
BFS
Big D Outdoors USA
Big Lots
Biointellisense
BISSELL
blackbaud
Builders FirstSource
Cambium Learning Group Inc.
CAMBREX CORPORATION

Caterpillar
Charter Communications
Cisco
CommScope
Comstock Resources, Inc.
Conair
Cornerstone Building Brands
Corteva
Covia Holdings LLC
Cummins Inc
Daimler Truck North America LLC
Daktronics, Inc.
Deckers Outdoor Corporation
Deere & Co
Deluxe Corporation
DIGITALOCEAN
DMCL
Domtar Corporation
Donaldson Company
Doosan Bobcat North America
doximity
Ducommun Incorporated
Dutch Bros
EBSI
Elektro
Eli Lilly and Company
Engineered Floors
Equinox Holdings
Esco technologies inc.
FormFactor, Inc.
Fresenius Kabi USA LLC
Freudenberg Group
FUJIFILM Holdings America
Corporation
GE Appliances

General Dynamics Corp.
Great Clips, Inc.
Hitachi Energy
Horizon Therapeutics
HubSpot
Imerys
Infinite Electronics
Interface
Interior Logic Group
Intuit
Jabil Inc.
Jaggaer LLC
Johnson Electric North America
Johnson Outdoors
JR Simplot Company
K. Hovnanian Companies LLC
Kemin Industries, Inc.
Kemira
Kimberly-Clark Corporation
Klick
Knowles Corporation
KOSTAL
Land O' Lakes
Leggett & Platt, Incorporated
Lockheed Martin
Lynden Inc.
Lyra Health
MACOM technology
Magna International
Martin Marietta
Mativ
Maxar Technologies
MaxLinear, Inc.
MEDHOST
MGM Studios

Midmark Corporation
Milliken and Company
mister car wash
MMIT
Musco
Navistar
Neiman Marcus Group
Nemak
Nestle USA
Nexteer Automotive
NextGen Healthcare
NFM
NHBB Inc
Niagara Bottling, LLC
NMB USA Inc
Northrop Grumman
Novartis
Novavax Inc
Novocure Inc
Occidental Petroleum Corp
Ocean Oil Construction Services
oerlikon
Old Dominion Freight Line Inc
Olympic Steel, Inc.
Oshkosh Corporation
OSI Group, LLC
Ovivo
OXY, inc
Packaging Corporation of
America
Paymentus
Persefoni AI Inc.
Philips North America
Pinterest
Plexus Corp

Pollard Banknote Limited
Principal
PulteGroup
Refresco
Rehrig Pacific Co
Reiter Affiliated Companies
Rocket Software, Inc.
Rockwell Automation
Roivant Sciences Inc
Safelite
Safran
Siemens Corporation
Siemens Energy, Inc.
Simmons Foods, Inc.
Splunk
Starkey Laboratories Inc
Stryker Corporation
SurveyMonkey
Tate & Lyle Americas LLC
Taylor Morrison
TDS Inc.
The Kraft Heinz Company
The Suddath Companies
The Toro Company
The Wonderful Company
Titelist/FootJoy
Tokyo Electron
Toyota Industries North America
Traverse Therapeutics
Trouw Nutrition USA, LLC
Two Sigma Investments, LP
ULA
United Therapeutics Corporation
UnitedHealth Group
UPS

US Bank
USANA Health Sciences, Inc.
Varian Medical Systems Inc
Veeam Software
Verint Systems Inc
Verizon Communications Inc.
Vertex Pharmaceuticals
Visa
Vista Outdoor
Vitesco Technologies USA LLC
Volvo Cars USA
Warner Bros. Discovery Inc.
Wellmark, Inc.
Wells Fargo
Wesco
Western Digital
Williams-Sonoma, Inc.
Zapier



Introductions and Announcements

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

- Welcome to the third Roundtable of 2023.
- There are a lot of changes with Form 6765. Not to worry, MASSIE has the solution.
- MASSIE will be in New York on October 22 for TEI's annual conference. Stop by the booth to say hello.
- If you want Peter and Jason to speak to your TEI group, please email ilyubashevsky@massietaxcredits.com.

Understanding the Implications of Notice 2023-63 on Section 174 Challenges

Jeffrey Moeller, Ivins Phillips

The issuance of Notice 2023-63 in early September has ignited a fresh round of discussions about the challenges posed by the Tax Cuts and Jobs Act (“TCJA”) provision, especially regarding the capitalization and amortization of Section 174 expenses. This whitepaper offers a comprehensive overview of the notice and its implications.

Background on Section 174 Challenges:

- The Regulations under Section 174 categorically define research or experimental (“R&E”) costs as those directly linked to the development or enhancement of a product or a component thereof.
- However, the absence of detailed guidelines has made it evident that most indirect or allocable costs might be deductible under Section 162.



Key Highlights from Notice 2023-63:

- A pioneering allocation protocol for Section 174 expenses has been introduced.
- Section 4.03(1) sheds light on allocable costs, offering a non-exhaustive list.
- Conversely, Section 4.03(2) outlines costs that shouldn't be treated as specified research or experimental ("SRE") [AC1] expenditures, irrespective of their indirect ties to SRE activities.
- This introduced system demands less allocation than Section 263A but exceeds the stipulations of the INDOPCO Regulations.
- There's active deliberation from the Treasury and IRS about introducing safe harbors, simplification methods, and optionality.

A Look at Allocable Costs:

- Labor:
 - Encompasses both employees and contractors engaged in, overseeing, or directly aiding SRE activities.
 - Note: Labor costs encompass all compensation facets, excluding severance.
 - Materials and Supplies.
 - Cost-recovery:
 - Incorporates depreciation, amortization, or depletion allowances for property used in SRE tasks, including those commissioned before December 31, 2021.

- This raises pertinent questions: Is amortization legitimized to be capitalized? What sort of intangibles are deemed useful in SRE? Why should cost-recovery be capitalized if the property was activated before the TCJA amendment's relevance?
 - Patent costs.
 - Operation and Management:
 - Consists of overhead costs tied to assets used in SRE activities, including rent, utilities, insurance, repairs, taxes, and more.
 - Travel.

Costs That Are Non-allocable:

- General & Administrative ("G&A"):
 - Departments that only indirectly aid SRE activities such as payroll, human resources, accounting, etc.
- Interest accrued on debts to fund SRE tasks.
- Specific costs of internally developed computer software for business use.
- Other expenditures previously excluded by §1.174-2.
- Deductions from amortization under Section 174.

Contract Research Insights from Notice 2023-53:

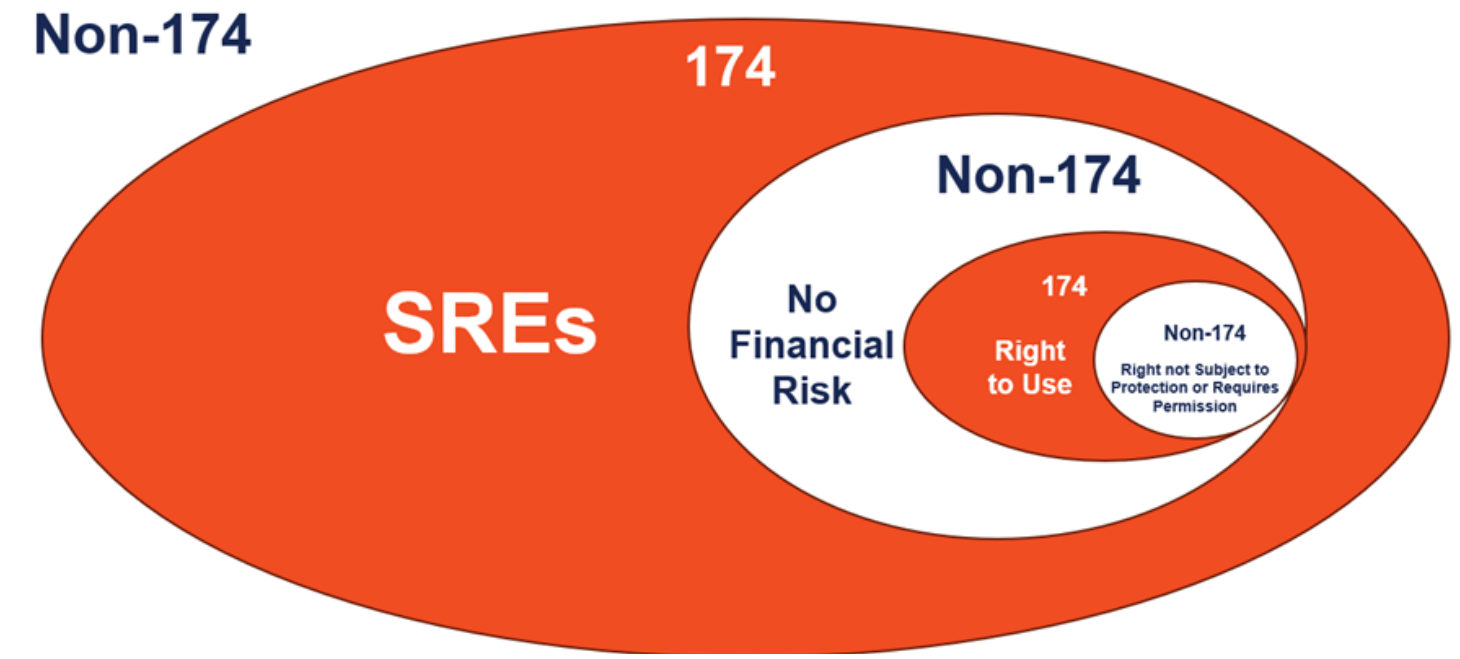
- When a researcher shoulders financial risks:
 - Expenses are identified as SREs under Section 174.
 - Emphasizes fixed-price contracts where payments hinge on successful outcomes.

- When a researcher is free from financial risks:
 - Expenses aren't recognized as SREs under Section 174 unless the researcher "has a right to use any resulting SRE product in the trade or business of the [researcher] or otherwise exploit any resulting SRE product through sale, lease, or license."
 - The term "SRE product" is defined expansively, covering pilot models, software, patents, and more.
 - However, a mere "right" is not inclusive of rights subject to permissions from unrelated entities.

A potential for double capitalization arises for both the payor and researcher.

Researchers need to be keenly aware of Section 174 when their performing activities intend to resolve uncertainties. The implications of this regulation are pivotal for how your expenses are handled.

- If you're a researcher conducting tasks in line with Section 174 regulations, you fall under Section 174. This implies you have SREs, and there's an obligation to capitalize and amortize them.
- There's an intriguing notice to be aware of. If your research carries no financial risk, then you're no longer bound by Section 174 but will likely fall under Section 172.
- Now, here's where it gets tricky. Even if you bear no financial risks but maintain a "right to use" the research output, you're once again in the realm of Section 174 and the obligations that come with it. However, this "right to use" isn't a blanket term; if it's not legally protected, you're exempted from Section 174.



Pictured Above: A breakdown of Section 174 and non-174 activities.

- Diving deeper:
 - "A Right to Use":
 - Treasury's Perspective: Simply using Intellectual Property (IP) for further development might suffice.
 - However, if your right involves receiving royalty payments from the research, it's likely not considered under this clause.
 - Protection Under Law:
 - The treasury essentially indicates that know-how doesn't count under this.
 - This raises a question: Could this be applicable to non-exclusive rights?
 - The "Permission" Clause:
 - A contract where a researcher retains rights to produce the item exclusively for the funding customer (like in follow-on contracts) falls under this

Notice 2023—63 – Request for Comments

The Treasury has released Notice 2023—63 as a formal request for comments on several pivotal areas concerning Section 174 regulations and their broader implications.

This notice shines a spotlight on the intricacies of research expenditures, software development, contract research, and several other aspects.

Here's a breakdown of the primary focus areas for Jeffrey Moller:

- Scope and Allocation of Section 174 Expenses:
 - Simplification via methods and safe harbors (e.g., ASC codes).
 - Special provisions for government contracts.
- Software Development:
 - Possible redefinition (using, for example, ASC codes).
 - Identifying activities in software development that ought to be excluded.
- Contract Research:
 - Questions arise on whether the criteria for determining if a research contract has SREs under Section 174 should be akin to the funded research rules under § 41(d)(4)(H).
 - Special rules for government-related contracts.
 - Exploring other determining factors for Section 174 categorization.
 - Setting safe harbors, particularly for research conducted outside the US.
 - Defining rules for contracts with related foreign research contributors and beneficiaries.

- Disposition, Retirement, or Abandonment of Property:
 - How to handle amortization in the context of contributions to or distributions from a partnership and within partnership transactions.
- Long-Term Contracts (Section 460):
 - Considering a cost inclusion approach for the percentage of completion method.
- Other Considerations:
 - Assessing if the current record-keeping mandates are adequate for validating Section 174 computations.
 - Defining the term "pilot model."
 - Outlining special regulations for startups and smaller taxpayers.
 - Interpreting references in §§ 280C(c)(1)(B) and 56(b)(2)(A) in relation to the amortization deduction under § 174(a)(2).

Spotlight Speaker

Stephen Whiteaker & Jason Massie
MASSIE R&D Tax Credits

Form 6765 has recently undergone proposed changes. The underlying motivation for these revisions is the concept of risk assessment, with the intention to optimize resource allocation for the IRS. As numerous claims flooded the IRS – some inadequately substantiated – the need for a clearer and more rigorous form became evident.

Key Changes and Observations:

Page 1:

- Minor changes, with particular emphasis on Section 280C queries, which have been repositioned to the beginning of the form.
- The form now inquires if one is part of a "controlled group or business under common control."

Page 2:

- New Section E: This introduces a business-component-centric approach.
 - Question 45: Addresses the correlation between the number of business components and risk assessment. The term "business component" is notably broad and crucial to the form.
- Questions 46-49: Previously considered supplementary, these questions are now integral to the form.
 - Question 47: Introduces complexity regarding base period calculations
 - Question 48: The inclusion of the term "new category" necessitates further clarity.
 - Question 49: Centers on the directive's status, emphasizing the significance of QREs claimed under the directive. It introduces a potential benefit by allowing the listing of "ASC 730" as a single line item. Conversely, listing all BCs can be intricate and challenging to align.

Credit for Increasing Research Activities

OMB No. 1545-0619

▶ **Attach to your tax return.**
▶ **Go to www.irs.gov/Form6765 for instructions and the latest information.**

Attachment
Sequence No. **676**

Name(s) shown on return

Identifying number

Page 3:

- Section F: Introduces several queries:
 - Will all U.S. entities need to complete this section?
 - Is there an exemption based on a QRE threshold?
 - How will large-scale taxpayers with numerous BCs ensure compliance?
 - Question 50(c): Focuses on the descriptive names of business components, suggesting the necessity for adaptability.
 - Question 50(d): Represents a substantial paradigm shift, highlighting the challenge of detailing uncertainties and experimentation processes within a constrained space.

The proposed changes to Form 6765 signal a departure from the original guidelines set forth by Congress in 1981. While the objective behind these alterations is evident – to enhance the clarity and accuracy of claims – they bring forth a host of questions.

There is a palpable need for further guidance from the IRS to address the emerging uncertainties. In the interim, stakeholders must familiarize themselves with these changes to ensure compliance and appropriate claim submissions. We strongly advise engaging with the form and seeking expert counsel to navigate this evolving landscape confidently.

Regardless of the challenges posed by the new form, MASSIE R&D Tax Credits remain at the forefront of providing solutions.

The Form 6765 Solution

Taylor Eiselin & John Hoang, MASSIE R&D Tax Credits

A recurring challenge many companies face is the low participation from subject matter experts (“SMEs”). Often, tax directors feel burdened with administrative tasks such as constantly scheduling and rescheduling meetings. With this in mind, MASSIE has created a portal to provide a seamless experience and address some new Form 6765 challenges.

Features and Customization:

- Sample Answers Hover Over:
 - One feature highlighted during the demonstration by John was the 'sample answers hover over.'
 - This tool was developed in response to user experience testing feedback. Often, SMEs are unsure of the extent of details required in their responses — whether it's a need for elaborate 5 pages or concise 5 bullet points.
- Data Storage & Management:
 - MASSIE's portal is equipped to handle large volumes of data. Clients, even those with 4000 surveys, can effectively manage their data.
 - The backend, as shown by John, allows for a deep dive into the data and how it's stored.
- Dashboard Customization:
 - MASSIE's portal offers customizable dashboards.
 - Users can tailor their view to analyze QRES by various filters, such as by state, year-over-year change, department, and business component.
 - This real-time analysis ensures users can consistently track their metrics, whether for provisions or upcoming deadlines.

- Tasks and Collaboration:
 - The portal is not exclusive to Microsoft products. While integrated with Teams, MASSIE is open to exploring other collaboration hubs based on the client's needs.
 - It's important to note that this isn't standalone MASSIE software. Instead, the portal leverages tools clients already own.
 - SMEs benefit from a hassle-free experience — no need for additional logins or navigating unfamiliar third-party systems.

MASSIE's new portal is designed with the client in mind, providing solutions to common challenges and enhancing the overall experience.

For those interested in integrating this solution into their current processes, MASSIE is ready to assist.

For more information, live demonstrations, or any queries, please feel free to reach out to us.



presented by  MASSIE

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

**December 14, 2023
3 PM ET**