HOW TO CLAIM THE R&D TAX CREDIT
Key Takeaways:

- The activities-based Federal R&D Tax Credit allows qualified businesses to obtain a dollar-for-dollar reduction in tax liability.
- Qualifying activities include the development or improvement of products, processes, software, formulas, and more. Businesses in many different industries may claim the Credit.
- If research activity passes the Four-Part Test, it qualifies for the Credit.
- Qualified Research Expenses (QREs) include wages, supplies/materials, cloud hosting, and third-party contractors. The determination of QREs is a nuanced endeavor.
- A rough estimate of Credit amount can be easily calculated, but is dependent on the accuracy of the QREs employed. It can be quite difficult to determine accurate QRE values – there are multiple caveats and nuances involved. Credit estimates are only as good as the QRE values used to obtain them. Online Credit Calculators are subject to the same inherent flaw.
- The Credit should be calculated by an R&D specialist, who will select between the Regular Research Credit (RRC) Method and the Alternative Simplified Credit (ASC) Method.
- The Credit is claimed using IRS Form 6765, and “sufficient documentation” is required.
- The Payroll R&D Credit is a modified version of the R&D Tax Credit for Qualified Small Businesses (QSBs).
- The Federal credit is permanent. It may be claimed back 3 years, and carried forward for 20 years.
- Claiming the Federal R&D Tax Credit does not increase the likelihood of an audit.
- Over 40 states have their own state-specific R&D Tax Credits, which can be used in conjunction with the Federal Credit.
What is the Federal Research and Development (R&D) Tax Credit?

The Federal Research and Development (R&D) Tax Credit -- also known as the Research and Experimentation (R&E) Tax Credit -- is an activities-based tax credit for companies that incur R&D expenses in the United States. Based on IRC § 41 & § 174, the Credit is intended to incentivize innovation and experimentation.

Eligible taxpayers may claim qualifying expenses – wages, supplies, contract research, cloud hosting – for a dollar-for-dollar reduction in tax liability.

The Credit has undergone quite an evolution over the years. A brief timeline:

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>Created in the Economic Recovery Act</td>
</tr>
<tr>
<td>1981-2004</td>
<td>Renewed over the years as part of various year-end tax relief packages</td>
</tr>
<tr>
<td>2004</td>
<td>“Discovery Rule” removed formally through Treasury Directive 01/04</td>
</tr>
<tr>
<td>2007</td>
<td>Alternative Simplified Credit (ASC) Method introduced</td>
</tr>
<tr>
<td>2015</td>
<td>Permanently extended through the PATH (Protecting Americans from Tax Hikes) Act</td>
</tr>
<tr>
<td>2016</td>
<td>Credit may be used to offset AMT (Alternative Minimum Tax)</td>
</tr>
<tr>
<td>2016</td>
<td>Payroll R&amp;D Tax Credit established (see sidebar below)</td>
</tr>
<tr>
<td>2018</td>
<td>Act passed with a provision mandating amortization of Sec. 174 expenses beginning in TY 2022</td>
</tr>
</tbody>
</table>

Who Can Claim the Federal R&D Tax Credit?

What Types of Activities May Qualify?

The R&D Tax Credit is far more expansive than most people imagine, and many businesses qualify just by performing their day-to-day activities. You/your client may qualify if you engage in some type of technical activity to develop a new or improved business component. “Business Component” is the IRS’ umbrella term for all sorts of things one could create, including products, processes, software, formulas, techniques, etc.

### BUSINESS COMPONENT

<table>
<thead>
<tr>
<th>BUSINESS COMPONENT</th>
<th>EXAMPLES OF QUALIFYING ACTIVITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product</td>
<td>Developing or Improving Consumer Product, Custom Equipment, Architectural Design</td>
</tr>
<tr>
<td>Process</td>
<td>Developing Manufacturing Process, Scale-Up Production Process, improving a Process to Increase Efficiency or Reduce Waste or Cost</td>
</tr>
<tr>
<td>Software (for Internal or External use)</td>
<td>Developing or Improving an Application for Phone or PC, a Cloud-Based Solution, a Software Component of a Larger Product. Product may be sold or licensed to a customer or used by the taxpayer in his trade or business.</td>
</tr>
<tr>
<td>Formula</td>
<td>Developing or Improving Food or Beverage Recipes, Pharmaceuticals, Cosmetics, Livestock Feed</td>
</tr>
<tr>
<td>Techniques</td>
<td>Developing New Techniques or Improving Existing Ones (welding, coating, drilling better.)</td>
</tr>
</tbody>
</table>
Industries that Commonly Claim the R&D Tax Credit Include:

- Agriculture
- Architecture
- Brewery
- Chemical
- Engineering
- Fabrication
- Food and Beverage
- Life Sciences
- Machining
- Manufacturing
- Software Development
- Tool and Die Casting

We often think of external R&D – developing a product for outside sale/lease/license. However, company-driven internal initiatives may also be eligible for the Credit. This is seen quite often in the manufacturing industry, as firms attempt to improve their in-house production processes.

You don't have to be working on something brand new – improving the reliability, quality, functionality, or performance of existing products and processes may qualify.

There is no minimum number of employees required to qualify, and your employees don't need to hold a certain job title or possess a certain degree – if they are engaging in the improvement of products or processes, the research may qualify.

Even if the research is ultimately unsuccessful, it may qualify.

No industry is excluded from qualifying for the Credit, and in fact, businesses in virtually every industry have benefitted from the R&D Tax Credit.

“There is no minimum number of employees required to qualify.”
What is the Four-Part Test?

We discussed the types of activities that may qualify for the Federal R&D Tax Credit in the section above. Now, let’s get more specific. To qualify for the R&D Tax Credit, research activities need to meet the IRS’ “Four-Part Test:”

01 New or Improved Business Component

The activity must be related to developing or improving the functionality, quality, reliability, or performance of a business component, as discussed.

02 Elimination of Uncertainty

The activity must be undertaken for the purpose of eliminating some uncertainty related to appropriate design, method, or capability. The specifics will vary of course, but often researchers are trying to answer questions like:

- Can I make a brand-new product?
- What will the new product design look like? How can I make it?
- Can I improve an old product? Is this even feasible?
- Can I improve the process by which the product is made?
- How can I incorporate new features and functions into an existing product/process?

03 Process of Experimentation

The activity must involve some kind of experimentation designed to resolve the uncertainty. The nature of the experimentation will vary but may include:

- Evaluation of Alternatives
- Hypothesis Testing
- Systematic Trial and Error
- 3D Modeling or Simulations

04 Technological in Nature

The activity must be based on a hard science, which could include any of the following:

- Engineering
- Physics
- Chemistry
- Biology
- Computer Science
- Pharmaceutics
- Food Science

If your activity meets all 4 criteria, it is eligible for the R&D Tax Credit.
Once you've determined that your business activity meets the Four-Part Test criteria, it's time to start thinking about the costs invested in the activity.

**Qualified Research Expenses (QREs)** are the costs that can be claimed under the R&D Tax Credit. There are four main categories:

1. **Wages paid to in-house employees**
   - Often the largest QRE
   - Lots of employees' wages will qualify, even if they are not directly performing R&D activities. Those supporting or supervising R&D activity can qualify as well.

2. **Supplies/Materials**
   - Costs paid for tangible materials and supplies including raw materials, prototypes, reworked products, first article runs, and pilot models
   - This is the largest QRE when it comes to the manufacturing industry
   - There are some key exclusions to this provision including land, land improvements, and property that is of a character subject to the allowance for depreciation

3. **Cloud Hosting**
   - Costs paid for an off-site cloud-based hosting service to house R&D development efforts
   - Costs paid for storage purposes do not qualify – the service must be used for development

4. **Amounts paid to third-party contractors**
   - Costs paid to any third-party entities or individuals for services like testing, modeling, laser-cutting, engineering etc.
   - Only 65% of these costs can be claimed towards the Credit
   - The third-party contractor must be based in the United States
How Do You Estimate an R&D Tax Credit Amount?

Once you have an idea of the amounts you’ve spent on wages, supplies, cloud hosting, and third-party contractors, you can estimate a very rough Credit amount.

Remember that only costs related to new or improved/customized business components will qualify.

For example, consider a manufacturer of motors. 80% of the motors are standard-issue, and costs involved in producing them would not qualify for the R&D Tax Credit. However, 20% of the business comes from custom-designed and developed motors, so 20% of the business costs can be claimed under the R&D Tax Credit.

Let’s say the Company spent $2M on wages, and another $2M on material costs, for a total of $4M. Only 20% of those costs actually relate to the development of custom motors, so:

- $4M x 20% = $800K = Total Qualified Research Expenses (QREs)
- Then you can multiply your total QREs x 6.5% to get a benchmark credit amount:
- $800K x 6.5% = $52,000 in Federal R&D Tax Credit Annually

This is an informal estimate, useful in determining a ballpark figure. However, it does not consider the multiple nuances involved in determining Qualified Research Expenses.

In October of 2021, the IRS released Memorandum Number 20214101F, “Minimum Requirements for an R&D Claim.” This Memorandum states that for each business component, the claimant must:

- Identify all research activities performed;
- Identify all individuals who performed each research activity; and
- Identify all the information each individual sought to discover.

So each employee’s wage must be analyzed and scrutinized before it can be included as a QRE. Additionally, you need to determine what amount of time each employee spent on the qualifying activity, and only include a proportional fraction of their salary in the QRE. Determining the value of QREs is a complex process.

As such, since this estimate is QRE-dependent, it is a very rough figure, useful for ballparking only.

Similarly, online calculators that claim to calculate your Credit in moments are equally suspect. They rely on QRE values entered by the taxpayer that may or may not be accurate.

To ensure that the R&D Tax Credit is calculated accurately and leveraged fully, it is highly recommended to consult an R&D specialist.
How is the R&D Tax Credit Actually Calculated?

So how does an R&D professional actually calculate the R&D Tax Credit?

There are two methods that can be used:

- Regular Research Credit (RRC) Method
- Alternative Simplified Credit (ASC) Method

**RRC Method**

01 Establish the appropriate “Credit Base Period” -- determine the first year of R&D activity and use the flowchart below. Notice that 1984 and 1994 represent crucial splits in the flowchart.

02 Determine the “fixed-base percentage” using gross receipts and QRE amounts from the appropriate “Credit Base Period”:

- 80s Base Company: from taxable years in the mid-1980s
- Start-Up Company: from taxable years starting in or after 1994

03 The “fixed-base percentage” is then multiplied by average annual gross receipts from the previous 4 years to get a “base amount.”

04 The professional will then compare the “base amount” to 50% of the current year QREs and select whichever is greater.

05 The difference between that value and the value of the current year QREs is then multiplied by 20% to calculate the Credit.

This method is not only complex, but relies on historical data that may be difficult to access or in some cases, non-existent.
ASC Method

In 2007 the IRS introduced the Alternative Simplified Credit Method. The underlying principle is similar, but the process doesn't rely on decades-old data. Instead, practitioners only have to go back three years:

01 Determine QREs for the preceding three years and average them.

02 Multiply that average by 50% to determine the “credit base.”

03 Subtract the “credit base” from current year QREs.

04 Multiply that value by 14% to calculate the Credit.

If a business doesn't have three years of R&D history to calculate a credit base, then the R&D tax credit can be calculated as a flat 6% of current year QREs.

RRC vs. ASC: How to Choose?

Obviously, the ASC Method is the simpler choice, and it's often selected for that reason alone. But it shouldn't be an automatic decision, as the ASC Method doesn't always produce the maximum benefit.

In general, the RRC method may work well for taxpayers with low “base amounts” or for new startups. The ASC method is often better suited for companies with higher “base amounts,” firms that have incomplete records, or firms that have undergone mergers or acquisitions that might complicate matters.

However, the preferred method will ultimately depend on individual facts and circumstances. In fact, the IRS recommends that practitioners perform both calculations, and then select the one that provides the most benefit.

An additional note – just because the RRC Method was best for you last year, doesn't mean that it will confer the most benefit again this year. As circumstances change, it’s important to reevaluate the method selected.
How Do You Claim the R&D Tax Credit?

Businesses can claim the R&D Credit by filing IRS Form 6765, Credit for Increasing Research Activities. Taxpayers must provide “sufficient documentation” to support the amount of QREs they are claiming.

The IRS does not specify what constitutes “sufficient documentation,” and indeed the nature of the documentation will likely vary by industry. In general, the more documentation you can retain and provide as needed, the better. Here are some examples of helpful documentation:

- Payroll information for employees directly involved in R&D and for employees or managers supervising them
- General ledger reports indicating which costs and supplies were related to R&D activity
- Copies of contracts and invoices paid to third-party contractors
- General documents that demonstrate the research process and progress: test results, blueprints, drawings, emails, meeting minutes, etc.

Credible employee testimony is also helpful in substantiating the R&D Tax Credit claim, especially in conjunction with documentation.

Once the documentation has been organized, claimants or their professional advisors must complete the applicable sections of Form 6765:

**SECTION A** is used to claim the Credit via the Regular Research Credit (RRC) Method

**SECTION B** is used to claim the Credit via the Alternative Simplified Credit (ASC) Method

**SECTION C** addresses additional forms and schedules that must be reported based on entity structure

**SECTION D** is only required for Qualified Small Businesses (QSBs) taking the Payroll R&D Tax Credit

Again, the IRS recommends that the credit be calculated using both the RRC and ASC Methods. Then the section that results in the greater benefit (A or B) can be completed.

One additional note for original filers – don’t overlook the 280C Election. This Election reduces the rate of the R&D Credit by the amount of the corporate tax rate and avoids adding it back into taxable income. This may be particularly significant for pass-through entities and should be discussed with your tax professional. The Election may not be taken on amended returns, so if you choose to elect 280(c), you must do so at the time of the original filing.

What is the Payroll R&D Tax Credit?

The Payroll R&D Tax Credit is a modified version of the Federal R&D Tax Credit, specifically for small businesses that do not yet have income tax liability. Created through the PATH Act of 2015, the Payroll R&D Tax Credit permits “Qualified Small Businesses” to claim up to $250,000 annually, and to use that credit to offset the Federal Insurance Contributions Act (FICA) portion of their annual payroll taxes.

The Payroll R&D Tax Credit can be taken for up to 5 years, resulting in a potential total credit of $1.25M to apply against payroll taxes. This is a huge boon to start ups and smaller businesses because the Payroll R&D Tax Credit can free up crucial capital needed to continue their research.

To be considered a “Qualified Small Business,” you must:

- Have less than $5M in gross receipts for the year in which you wish to claim the credit; and
- Have no more than 5 years of gross receipts

The R&D Credit is calculated on the federal income tax return as usual (see “How Do You Claim the R&D Tax Credit”) and may be applied against payroll taxes starting the quarter after the credit is elected. For calendar year taxpayers, the R&D credit can be applied against payroll taxes as early as April of the following year.

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Is There a Limit to How Much Credit Can Be Claimed?

There is no set limit to the amount of Credit that can be claimed, but all Credit must be used to offset tax, either in the year in which the Credit was taken, or in past or future years. A taxpayer’s credit utilization or “spread” is the amount of tax that is available for the credit to offset, which is calculated using the below:

\[
\text{Utilization} = \frac{\text{RTL} - \text{TMT}}{\text{TMT}}
\]

Historically, taxpayers who were subject to AMT were unable to utilize the credit. However, as part of the PATH Act of 2015, a provision was implemented that allows Eligible Small Business (ESBs) to remove the AMT limitation, providing taxpayers an opportunity to utilize the credit. An ESB is a company with $50 million or less in average gross receipts over the prior 3 years.

The provision, known as the 25/25 Rule, allows taxpayers to generate a new tentative minimum tax (TMT) that is reduced below their regular tax liability (RTL), effectively removing AMT. The calculation is: New TMT = 25% x (RTL - $25,000).

How Far Back Can You Claim the R&D Tax Credit?

Federal R&D Tax Credits may be claimed retroactively by filing amended returns for the 3 previous years. Certain states may permit amending returns for more than 3 years, while others do not permit amending returns at all.

How Long Can R&D Tax Credits Be Carried Forward?

The Federal R&D Tax Credit can be carried forward for up to 20 years. State Credits may also be carried forward for a length of time determined by the state.

Does the R&D Tax Credit Expire?

The PATH Act permanently extended the R&D Tax Credit. This allows companies to incorporate the Credit into their annual tax-planning strategies and to rely on credit-driven revenue.
Is the R&D Tax Credit a Good Tax Write-Off?

It’s important to distinguish between tax deductions and tax credits:

- Tax deductions – or “write-offs” -- reduce the amount of income that can be taxed.
- Tax credits directly reduce a company’s tax liability.

The R&D Tax Credit, then, isn’t a write-off, but is actually a more powerful incentive.

A $500 tax deduction might save you $50 in taxes.

But a $500 tax credit – like the R&D Tax Credit – is a dollar-for-dollar incentive, saving you $500 in taxes.

As such, the R&D Tax Credit provides businesses with more revenue than a corresponding “write-off” would, making it an extremely attractive incentive.

Does Filing for the R&D Tax Credit Increase the Likelihood of an Audit?

Filing for the R&D Tax Credit does not increase the likelihood of an audit. That said, it is critical to thoroughly document qualified research activities and costs in the unlikely event of IRS scrutiny.

As discussed above, there is no specific type of documentation required, but the documentation must be “sufficient” (§ 6001).

An object lesson took place in April of 2019, reminding taxpayers of the consequences of insufficient documentation. In Siemer Milling Company (Siemer Milling) v. Commissioner of Internal Revenue, the Court ruled that Siemer Milling lacked sufficient documentation to support their claimed Credits, and subsequently disallowed over $235,000 in Credits. The Court held that Siemer Milling did not provide sufficient documentation to demonstrate that their business activity had met all parts of the Four-Part Test, particularly Part 3 – Process of Experimentation.

We expect the IRS to closely review filings this year, looking for compliance with the recent mandatory amortization of Sec. 174 expenses. This is all the more reason to ensure your documentation is in order.

Where Do I Go from Here?

If you’re interested in claiming the R&D Tax Credit, the next step is to select a qualified R&D Tax Credit provider. Your tax professional may be able to recommend a trustworthy partner, or you might consider the Capstan R&D Division.
## Bonus: Which States Have Their Own R&D Tax Credits?

In addition to the federal tax credit, about 40 states have their own R&D tax credit initiatives, and federal and state credits may be claimed simultaneously.

<table>
<thead>
<tr>
<th>State with R&amp;D Tax Credit</th>
<th>Application Required / Amendment Permitted</th>
<th>Statutory Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>Amendment</td>
<td>15 AAC 20.145</td>
</tr>
<tr>
<td>Arizona</td>
<td>Both AZ offers a non-refundable credit (amendment) and a refundable credit (application due on or after the first business day following the close of the previous calendar year). A.R.S. §§ 41-1507 and 43-1074.01 or 43-1168</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Can only take credit for 5 years. Application needs to be submitted to the AEDC prior to year end using estimates. Once AEDC approves the application, an annual report must be filed with AEDC and approved each year. AR Code § 15-4-2708 (2016): 20% of qualified research expenditures that exceed the baseline expenditure established in the preceding year for a period of five years</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>Amendment</td>
<td>IRC § 41(d) &amp; FTB Pub. 1001</td>
</tr>
<tr>
<td>Colorado</td>
<td>Enterprise Zone Program</td>
<td>Enterprise Zone Program</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Amendment</td>
<td>CGS § 12-217n and GS § 12-217j</td>
</tr>
<tr>
<td>Delaware</td>
<td>Application due by September 15th</td>
<td>Delaware Code Title 30. State Taxes § 2070</td>
</tr>
<tr>
<td>Florida</td>
<td>Application only - due by March 20-26 of each tax year</td>
<td>Florida Statute §220.196</td>
</tr>
<tr>
<td>Georgia</td>
<td>Amendment</td>
<td>Georgia Code § 48-7-40.12</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Application due by 03/31 of each year for previous tax year credits</td>
<td>§ 235-110.91</td>
</tr>
<tr>
<td>Idaho</td>
<td>Amendment</td>
<td>Section 63-3029G</td>
</tr>
<tr>
<td>Illinois</td>
<td>Amendment</td>
<td>§ 100.2160</td>
</tr>
<tr>
<td>Indiana</td>
<td>Amendment</td>
<td>Indiana Code § 6-3.1-4-1</td>
</tr>
<tr>
<td>Iowa</td>
<td>Amendment</td>
<td>Iowa Code sections 422.10(b), 422.33(5)(h), and 15.335(9)</td>
</tr>
<tr>
<td>Kansas</td>
<td>Amendment</td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>Amendment</td>
<td>KRS 141.395</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Application due by 12/31, can amend if credits are awarded after return due date</td>
<td>LA Rev Stat § 47:6015</td>
</tr>
<tr>
<td>Maine</td>
<td>Amendment</td>
<td>§5219-K. Research expense tax credit &amp; §5219-L. Super credit for substantially increased research and development</td>
</tr>
<tr>
<td>Maryland</td>
<td>Application due by November 15th of the calendar year following the tax year in which the expenses were incurred. Then must file amended return to claim the credit.</td>
<td>COMAR Chapter 03.04.10</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Amendment</td>
<td>830 CMR 63.38M</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Amendment</td>
<td>290.068 CREDIT FOR INCREASING RESEARCH ACTIVITIES</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Amendment</td>
<td>77-5803</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Application by 6/30</td>
<td>RSA 77-A:5 &amp; RSA 77-E:3-b &amp; Rev 2406.05</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Application due within 1 year of YE</td>
<td>Technology Jobs and R&amp;D Tax Credit Act</td>
</tr>
<tr>
<td>New York</td>
<td>Application, must claim credit on timely filed return</td>
<td>The Excelsior Jobs Program</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Amendment</td>
<td>N.D.C.C. § 57-38-30.5</td>
</tr>
<tr>
<td>Ohio</td>
<td>Amendment</td>
<td>Ohio Revised Code § 5751.51</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Application due (72 P. S. § 7301—7361, 7401—7412 and 7601—7606).</td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Amendment</td>
<td>Regulation CR 03-07</td>
</tr>
<tr>
<td>South Carolina</td>
<td>Amendment</td>
<td>SC Code Section 12-6-3415</td>
</tr>
<tr>
<td>Texas</td>
<td>Amendment</td>
<td>34 TAC §3.599</td>
</tr>
<tr>
<td>Utah</td>
<td>Amendment</td>
<td>UC §59-10-1012</td>
</tr>
<tr>
<td>Vermont</td>
<td>Amendment</td>
<td>32 V.S.A. § 5930i</td>
</tr>
<tr>
<td>Virginia</td>
<td>Application due</td>
<td>§ 58.1-439.12-08</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Amendment</td>
<td>71.28(4) Wisconsin Legislature, Section 238.396</td>
</tr>
</tbody>
</table>