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Endearing yourself to clients, no drama required: The power of the R&D tax credit



By Ross Alessandro

In the fictional worlds of television and cinema, attorneys have endeared themselves to their clients in many, often comical ways. Saul Goodman did it for years with his creative legal schemes on “Better Call Saul.” Vinny Gambini did it when he got his wrongfully accused clients acquitted of murder charges in “My Cousin Vinny.” And while it might be entertaining to assist your clients as these aforementioned characters helped theirs, I would like to share with you a less dramatic, but more conventional way to endear yourself to your clients – the Research & Development (R&D) Tax Credit.

Introduction

In the ever-evolving landscape of U.S. tax law, few provisions have generated as much attention in recent years as the R&D Tax Credit under IRC Section 41 and the deduction for research and experimental (R&E) expenditures under IRC Section 174. These incentives have long served as pillars of federal tax policy aimed at fostering domestic innovation. However, legislative shifts – most notably the Tax Cuts and Jobs Act of 2017 (TCJA) and the recent One Big Beautiful Bill Act (OBBBA) – have dramatically altered the terrain.

This article offers an overview of the R&D Tax Credit, including the criteria for qualification. It also examines recent developments that may affect your clients, such as:

- The reinstatement of immediate expensing under Section 174,
- New opportunities and challenges introduced by the OBBBA, and
- Changes to documentation requirements under Section 41.

Background

Credit for increasing research activities

Found in Section 41 of the Internal Revenue Code and formally called the “Credit for Increasing Research Activities,” the R&D Tax Credit was introduced in 1981 as part of the Economic Recovery Tax Act (ERTA) and was sponsored by Rep. Jack Kemp (a former Pittsburgh Steeler) and Sen. William Roth (yes, the Roth IRA

guy) as an incentive to encourage domestic R&D. Initially set to expire in 1985, the credit was extended 16 times over the next three decades and became permanent in 2015 with the enactment of the Protecting Americans from Tax Hikes Act (PATH).

The R&D Tax Credit is industry agnostic and provides a dollar-for-dollar reduction in federal tax liability for qualified research activities (QRAs). QRAs give rise to qualified research expenditures (QREs) which are needed to calculate the credit. QREs typically include expenses related to wages paid to employees who directly perform, supervise, and/or support QRAs, payments made to third parties who perform QRAs on the taxpayer’s behalf, and/or supplies used or consumed in the research process.

The credit is calculated based on the increase in QREs over a base amount, with a regular credit rate of 20% and an alternative simplified credit rate of 14%. Each year, a taxpayer may evaluate which calculation method is best for them based on a number of factors including, but not limited to, the availability of base period data / documentation, the trend of their QREs, and the credit resulting from each method. And while the credit is not refundable, unused credits may be carried forward up to 20 years and/or carried back one year.

So how does one know when the work their client is performing could possibly qualify for the credit?

Qualifying criteria

To qualify, activities must pass a four-part test:

1. Permitted Purpose – Improve functionality, performance, reliability, or quality of a business component.
2. Technological in Nature – Based on principles of science or engineering.
3. Elimination of Uncertainty – Must address uncertainty in capability, method, or design.
4. Process of Experimentation – Involves evaluating alternatives through modeling, simulation, prototyping, or trial and error.

The Four-Part Test is an “and” test, meaning that all four parts must be satisfied for QRAs to occur. Essentially, if a taxpayer performs work that seeks to create a new or improved business component (e.g., a product, process, software, technique, formula, or invention) in terms of function, performance, reliability, and/or quality, the taxpayer will likely satisfy the “permitted purpose” test. If the work being performed by the taxpayer fundamentally relies upon principles of the hard sciences, the taxpayer will likely satisfy the “technical in nature” test. If, through the course of their research, the taxpayer must seek to resolve technical uncertainty related to capability, method, and/or design, the

taxpayer will likely satisfy the “elimination of uncertainty” test. And finally, if the taxpayer undertakes a systematic evaluation of alternatives (e.g. prototyping, modeling, simulations, and/or trial-and-error testing) to eliminate technical uncertainty, the taxpayer will likely satisfy the “process of experimentation” test.

Simple questions that you can ask your clients to determine whether they may be performing QRAs include the following:

- Have you recently developed any new or improved products?
- Have you recently developed any new or improved processes / undertaken any LEAN initiatives?
- Have you applied for or have you been granted any patents?

Impact of the OBBBA / Rev. Proc. 2025-28

If you have clients who have historically claimed the R&D Tax Credit, they have recently received some relief in the OBBBA. In July 2025, the OBBBA introduced IRC Section 174A, “Domestic research or experimental expenditures,” which restored taxpayers’ ability to immediately expense domestic research and experimentation expenditures (this had been taken away in 2022 as a result of the Tax Cuts and Jobs Act). Foreign research and experimental expenditures still must be capitalized and amortized over 15 years.

Other provisions of the OBBBA that help taxpayers and make claiming the R&D Tax Credit easier include the following:

- Immediate Expensing Returns: Beginning for tax years beginning after December 31, 2024, domestic R&E costs are fully deductible in the year incurred – no special election needed.
- Retroactive Relief for Small Businesses: Companies with average gross receipts of \$31 million or less over the past three years can:
 - Amend 2022-2024 returns (must be done within one year of the bill’s enactment), or
 - Take a catch-up deduction in 2025 or split it between 2025 and 2026.
- Accelerated Deductions for Larger Businesses: Companies above the small business threshold cannot amend prior returns, but they can accelerate remaining amortization from 2022-24 over one or two years starting in 2025.

Like any piece of tax legislation, the OBBBA left practitioners with questions that required further clarification. This guidance was provided in the form of Rev. Proc. 2025-28 and outlines the procedures for making certain elections under the OBBBA for domestic R&E expenditures.

Claiming the credit / Form 6765 revisions

To claim the credit, taxpayers must file Form 6765 with their original timely filed tax return (including extensions). If amending a return, there is additional documentation required. Qualified Small Businesses (defined as having less than \$5 million in gross receipts for the current year and no gross receipts more than five years prior to the current tax year) can complete Section D of Form 6765 to make the payroll tax election and then complete Form 8974 to apply the credit against payroll taxes. This is a great way for start-up companies to utilize their credits before they have income tax to offset.

In parallel with legislative changes, the IRS has revised Form 6765, the primary vehicle for claiming the R&D credit. The new form includes:

- Section E which seeks additional information, including but not limited to the number of business components and officer’s wages included as QREs.

- Section G (mandatory completion of this section required after tax year 2024) requires detailed breakdowns of QREs by business component, the business component type and the information sought to be discovered.

- Taxpayers with QREs ≤ \$1.5 million and gross receipts ≤ \$50 million are exempt from completing Section G.

These changes reflect the IRS’s heightened scrutiny and underscore the need for robust documentation. Attorneys should advise clients to maintain contemporaneous records and consider implementing R&D tracking systems / methods.

Conclusion

While one may never match the dramatic flair of Saul Goodman or the courtroom bravado of Vinny Gambini, attorneys have a real opportunity to endear themselves to clients by helping them navigate the complexities of the R&D Tax Credit. By staying informed about legislative changes like the OBBBA and the evolving requirements for documentation and compliance, one can deliver tangible value that goes far beyond entertainment. In a landscape where innovation is rewarded, guiding clients to maximize these incentives is not just good practice – it’s good business. So, the next time your client asks how you can help, remember: sometimes the best way to be their hero is through a well-timed tax credit. ■

Ross Alessandro, CPA, MST is a Shareholder – Tax Advisors, Research & Development at Schneider Downs. He joined the firm in 2019 as a Tax Shareholder and currently leads its Credits & Incentives practice. He has 25+ years of public accounting experience, including four years implementing ERP systems. Prior to joining Schneider Downs, Ross was a Partner at a large national public accounting firm.