

## How the PATH Act Influences the R&D Tax Credit

The Protecting Americans from Tax Hikes Act of 2015 (PATH Act) made many temporary tax laws permanent, including the Research & Experimentation Tax Credit. This area of tax law has always been temporary and part of the annual Tax Extenders Legislation. With the permanent status, businesses can plan better and make year-end tax planning more efficient.

For tax years beginning after December 31, 2015, the R&D Tax Credit Small Business Provision allows eligible businesses to claim the R&D Tax Credit against alternative minimum tax (AMT). Eligible small businesses are defined as corporations, partnerships, or sole proprietorships that have average annual gross receipts of less than \$50 million over the three year period prior to the current tax year. This is similar to the provision that was enacted for the 2010 tax year and benefits a significant number of closely-held businesses and their shareholders.

Also beginning in 2016, for qualified small businesses (mainly start-ups), the R&D Tax Credit can be applied against the employer's FICA tax liability (non-Medicare portion) beginning on the first calendar quarter after the tax return submittal. Qualified small businesses are defined as companies earning revenue for no more than five years preceding the current tax year and having \$5 million or less in annual gross receipts.

There is a cap placed on the amount of R&D Tax Credit that can be applied against the employer's FICA tax liability. The cap is the lesser of:

- \$250,000;
- The R&D Tax Credit claimed for the current tax year;
- For a qualified small business other than a partnership or S corporation, the amount of business credit carryforward under Code Sec. 39 from the current tax year

A qualified small business may not make this election for more than five years. Offsetting the non-Medicare portion of an employer's FICA tax liability with the R&D Tax Credit isn't straightforward.

Contact McGuire Sponsel with questions in terms of the computations or elections.



**The PATH Act provisions clarify some of the technical and lesser known details of the R&D Tax Credit.**

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